John West and the Future of Legal Subscription Databases

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John West founded West Publishing with one goal: to respond to lawyers’ research needs by providing efficient and inexpensive access to legal materials. When adhering to this goal, West Publishing dominated the legal research market; when it did not, customers left. As West Publishing and all legal subscription databases look to the future, they must consider John West’s original vision.

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Introduction

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

¶2 John West’s decision to publish and index all judicial decisions indelibly changed legal publishing, potentially having “the greatest impact on American jurisprudence from its civilized formation to the present.”2 West Publishing’s National Reporters have achieved “quasi-official status as the place of record for American case law,”3 and the company’s “form of standardized case reporting, with unified indexing, became the accepted standard for case information.”4

¶3 West Publishing as a company no longer exists today, having been bought by an enormous transnational corporation in the 1990s.5 But that company still brands its legal database with the name “West.”6 It is a remarkable feat for a salesman, a nonlawyer, to have created a legal publishing company that had, and that continues to have, such a dramatic impact on legal research. West Publishing survived for more than one hundred years, due in no small part to the ingenuity of its founder. Will West Publishing survive another hundred years? Should the company look back to John West’s business model to consider what he would say about the future of legal research and the role that West Publishing should play in that future?

¶4 This article addresses these questions. Legal research is, and will continue to be, a fundamental component of the law and all aspects of legal practice,8 so any changes to how legal research is conducted will impact all legal professionals. The impact will likely be greatest on law librarians, who not only tend to be the heaviest

3. F. Allan Hanson, From Key Numbers to Keywords: How Automation Has Transformed the Law, 94 LAW LIBR. J. 563, 567, 2002 LAW LIBR. J. 36, ¶ 12.
5. See Berring, supra note 4, at 192; see also Ross E. Davies, How West Law Was Made: The Company, Its Products, and Its Promotions, 6 CHARLESTON L. REV. 231, 231 (2012) (noting that “West was acquired by Thomson Reuters in 1996, but the brand and identity survived that development”).
6. WestlawNext, of course, is that legal database. See Berring, supra note 4, at 192; see also Davies, supra note 5, at 231.
7. For consistency, I refer to the company that produces the West products as “West Publishing” or “West Publishing Company,” even though the name of the company that owns West Publishing has changed over the years. See Berring, supra note 4, at 192; Davies, supra note 5, at 231. When I am talking about John West the man, I use either “West” or “John West.” Later, when I discuss the legal databases Westlaw and WestlawNext, I use Westlaw or WestlawNext when referring only to the online database. Similarly, LexisNexis is used as the company name throughout, while database names are referred to as they changed over time.
8. See Yasin Sokkar Harker, “Information Is Cheap, but Meaning Is Expensive”: Building Analytical Skill into Legal Research Instruction, 105 LAW LIBR. J. 79, 81, 2013 LAW LIBR. J. 4, ¶ 6 (stating that “everything a lawyer does, from writing a motion to conducting discovery, must be firmly rooted in sound legal research.”).
users of legal research databases, but who also frequently stand as intermediaries between the users of the databases (attorneys, students, and professors) and the companies that control the databases.

§5 In this article, I focus on West Publishing because of the dynamic growth and challenges that West Publishing faced throughout its history and the innovative ways the company overcame those challenges. West Publishing’s history and actions evidence the constantly changing legal research environment and the evolving role that legal publishing companies have and will play within that environment in a way that no other company does. Consider three examples from West Publishing’s history: First, a salesman, not a lawyer, founded what is now a billion-dollar empire, and the company still retains that salesman’s name today. Second, West Publishing survived the transition from print to electronic to become one of the two main players in legal research databases, but did so in an extremely bumpy way. Finally, West Publishing was the first of the large legal databases to adopt a Google-like interface that mirrored Google’s single search bar.

§6 In the section that follows, I trace the historical developments in West Publishing’s history that are relevant to a discussion of the future of legal databases. By focusing on West Publishing when John West led it, I can do two things: first, highlight company trends that impacted the company’s growth and development; and second, provide context for analyzing the future of West Publishing.

§7 Then, in the next section, I review the movement to online legal databases that occurred in the late 1970s, examining how West Publishing’s failure to quickly adapt to the online market set it back to such an extent that West Publishing needed several decades to recover.

§8 I then analyze the current market of legal research, including the rise of smaller, niche databases, and the challenges that West Publishing faces in the future. The legal research market attracts many companies because of its size and potential, so West Publishing faces constant competition from smaller, niche databases. These databases are potentially the wave of the future, the new model for legal research. But the size and ubiquity of West Publishing means that as new challengers enter the field of legal research, West Publishing has the luxury of time and money, allowing it to wait and to focus on the innovations that are most likely to succeed as the market shifts, as new databases develop, and as technology changes. Because of West Publishing’s entrenchment, in this article’s conclusion I tentatively cast my vote in favor of West Publishing continuing to dominate the legal research market—but I do so with a grain of salt. West Publishing must be able to flexibly and competitively respond to changes in legal research methodology and it must address the cost of its database. John West understood these two key issues when he started his company. If West Publishing wants to excel for another hundred years, it must revert to its roots.

**West Publishing in 1890: Establishing a Culture of Change**

§9 In reviewing the history of West Publishing and considering the man who started that company, I selectively focus on two historical aspects that most impacted the future of the company. First is John West himself: a nonlawyer salesman who
named the company after himself and created an empire that still retains his name.\(^9\) Second, and more pragmatically, is West Publishing’s National Reporters and Digest System and John West’s promotion of the two, both of which fundamentally altered how lawyers access, perceive, and research the law.\(^10\)

\(^{10}\) In 1872, John West started a business designed to satisfy a pressing demand he had observed as a traveling salesmen for a bookstore: lawyers’ need for current legal materials, such as dictionaries, treatises, and state cases.\(^11\) Situated in St. Paul, Minnesota, John West’s location allowed him to avoid notice and thus direct competition from the far-off publishing centers of New York and Massachusetts.\(^12\) West’s location also allowed him easier access to reach out to the frontier lawyers who required his services.\(^13\) In addition to these advantages, John West’s publishing company succeeded primarily because of two business decisions: first, to publish all cases (in what became the National Reporter System); and second, to build an indexing system that would eventually become West Publishing’s Key Number System.\(^14\)

**John West’s Early Innovations Were Key to West Publishing’s Success**

\(^{11}\) For the first four years of his business, John West focused on obtaining and selling general law books, though he also dabbled in the production of legal forms.\(^15\) In 1876, however, John West’s brother, Horatio West, joined John West in the business and the two began work on the *Syllabi*. The *Syllabi* eventually became the National Reporter System and catapulted John West to national attention and made his publishing company a favorite in the courts.\(^16\) He continued that success with the American Digest Classification System.

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

\(^{12}\) The *Syllabi* was the first innovation of West Publishing and appeared to identify West Publishing as a pioneering, open access company. The first *Syllabi*, an eight-page weekly newsletter that printed Minnesota Supreme Court cases, served John West’s goal of “provid[ing] lawyers with a cheap and efficient means for learning about new cases.”\(^17\) The Minnesota *Syllabi* proved so popular that by 1879 John West had added coverage of Iowa, Michigan, Nebraska, Wisconsin, and the Dakota Territory, and renamed the *Syllabi* the *Northwestern Reporter*.\(^18\)


\(^{13}\) See id.

\(^{14}\) Id. at 119.

\(^{15}\) Id. at 115; see also Marvin, supra note 9, at 28.

\(^{16}\) Woxland, *supra* note 12, at 116; see also Marvin, *supra* note 9, at 30.

\(^{17}\) Jarvis, *supra* note 11, at 6.

\(^{18}\) Id.
In 1882, John West and his brother partnered with two investors, and the four incorporated as West Publishing Company. John West became the president, with Horatio West as the treasurer, and the two partners served as secretary and stockholder. Over the next three years, the company expanded its reporter system, adding several regional reporters until the reporter system reached national coverage in 1885. The success of the National Reporter System demonstrated the company’s popularity and drive: West Publishing went from reporting the cases of a single state to reporting the cases of almost forty states in less than ten years.

John West’s success derived from two key decisions: he published the entirety of court opinions and he published all court opinions. His business model differed radically from that of the courts and of other publishing companies. Until John West, not all courts published their opinions, and those that did frequently delegated publication to the court’s reporter. The court’s reporter printed cases under his own name, making it difficult to determine the court from which the opinion came. The reporters could be unreliable, and publication occurred at random intervals and in varying formats. To further muddle the system, courts frequently awarded publishing contracts based on political associations rather than on publishing merit. As a result, opinions were often poorly edited, incorrect, and published at irregular or rare intervals.

John West changed this by releasing court opinions quickly and at consistent intervals, and sold the opinions at a relatively inexpensive price. He requested that judges send him opinions and curried strong relationships with courts and judges: relationships that the company maintained until the 1970s. Additionally, John West earned customers because “all of the Reporters were edited and published on one uniform plan.” Mistakes were rare, and opinions were formatted in a consistent manner. Every word of an opinion and only the words of an opinion were published.

Over time, West’s . . . became the reporter of record for many jurisdictions. Even when a state published its own case reports, the West reporter versions were preferred because of the widespread distribution, reliability, and speed with which they were published.

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19.  Id.; see also MARVIN, supra note 9, at 40.
20.  MARVIN, supra note 9, at 40; Jarvis, supra note 11, at 6.
22.  Id. Although West Publishing Company faced several lawsuits over whether the individual states held copyrights in their own court opinions, the courts ruled in West Publishing’s favor, and the issue was settled in 1888 when the Supreme Court announced that court opinions “were freely available to anyone.” Id. at 122 (citing Banks & Bros. v. Manchester, 128 U.S. 244 (1888)).
23.  MARVIN, supra note 9, at 32–33; Woxland, supra note 12, at 118.
24.  MARVIN, supra note 9, at 32–33; Woxland, supra note 12, at 118.
25.  Hanson, supra note 3, at 567, ¶ 13.
26.  MARVIN, supra note 9, at 44.
27.  Id.
28.  Hanson, supra note 3, at 567 n.13.
29.  Richard A. Leiter, The 21st Century Law Librarian Conundrum: Free Law and Paying to Understand It, 29 LEGAL INFO. ALERT, no. 1, 2010, at 1. The same was true for statutes: “Although [West’s state and federal codes] were considered ‘unofficial’ versions, [West’s] annotated codes became well regarded and authoritative. In some cases, the West codes were adopted as official versions.” Id.
By 1889, two-thirds of judges of the highest courts had endorsed West Publishing’s reporter.\footnote{30}

§16 John West’s decision to publish all opinions in their entirety also differed markedly from the publishing standard set by his most immediate competitor, the Lawyers Cooperative Publishing Company.\footnote{31} The Lawyers Cooperative decided not to publish all cases, reasoning that many cases merely echoed law that had already been settled.\footnote{32} Instead, the Lawyers Cooperative chose to publish only those cases that its editors believed demonstrated legal issues that were “new or unusual, or [that] show[ed] development of the law.”\footnote{33} The Lawyers Cooperative especially favored cases that dealt with laws relevant to the growing legal fields of commercial litigation and politics.\footnote{34} But John West won out, recognizing that his customers preferred to have access to all cases, printed in their entirety.

*The American Digest Classification System Solidified West Publishing’s Reputation*

§17 Soon after his success as a national publisher, John West introduced his second important innovation: the American Digest Classification System. Started in 1887, the digest system aimed to classify every case according to its subject content.\footnote{35} West Publishing was not the first to index cases: Little, Brown & Company had started a similar classifying system, the U.S. Digest, which indexed cases back to the early 1800s.\footnote{36} But West Publishing had two distinct advantages over Little, Brown & Company: West Publishing already received all opinions through the National Reporter System, and the company had started indexing some of the cases that it published.\footnote{37} Little, Brown & Company needed to locate and request all new opinions and did not have the benefit of the National Reporter on its side, and the resulting cost of its digests far exceeded the cost of West Publishing’s digests.\footnote{38} Additionally, as with the National Reporter System, John West provided quick, reliable, and relatively inexpensive access to the classification system.\footnote{39} Members of the bar loved the digest, and the publication soon “outgrew its original format and coverage.”\footnote{40}

§18 Due to the growth and popularity of his digest system, John West outpaced his competition and bought the U.S. Digest from Little, Brown & Company in 1889.\footnote{41} Ten years later, in 1898, the American Bar Association (ABA) endorsed West

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30. *Symposium, supra* note 1, at 405 (written comments of John B. West).
32. Byron D. Cooper, *The Role of Publishing Houses in Developing Legal Research and Publication: The United States*, 38 Am. J. Comp. L. Supp. 611, 618–19 (1990); see also *Symposium, supra* note 1, at 409 (The president of the Lawyers Cooperative stated that such “reiterations” were “of no general value; indeed many of them had no value whatever, except to the parties and their counsel.”).
34. *Id.* This system eventually became the basis for annotated selective reports such as the *American Law Reports*. Cooper, *supra* note 32, at 619 & n.46.
36. Marvin, *supra* note 9, at 68.
37. *Id.* at 69.
38. *Id.* at 68–69.
39. *Id.*
41. Marvin, *supra* note 9, at 68–69.
Publishing’s American Classification Plan as “the model for modern digesting.” The classification scheme eventually formed the basis for West Publishing’s Key Number System, through which all cases are uniformly and permanently assigned numbers that are associated with specific subjects, or “points of law.” Judges and lawyers adapted their method of research to the digest and key number system established by West Publishing—a method that continues today.

John West the Man

In addition to smart business decisions, John West’s personality and strengths markedly contributed to the success of West Publishing. Before founding West Publishing, John was a salesman. When his brother Horatio West joined the company, John reverted to an advertising role and left Horatio in charge of operations. John then spent much of his time traveling around the country, selling his product, meeting with judges and attorneys, and convincing the ABA to endorse his company. Through John’s salesmanship, West Publishing ingratiated itself into the legal community, especially with judges who cared about the publication quality of their opinions. Eventually, John established a system of cooperation, through which judges would send their opinions to West Publishing and only to West Publishing, a system that continued into the 1970s. John succeeded so well at marketing his company and the company did so well at backing John’s claims that eventually even John could not compete with his empire. In 1899, due to disagreements with his partners, John left West Publishing to form a new legal publishing company. But his new company shut down within twenty years, unable to compete with West Publishing. John West died in 1922, leaving West Publishing to continue his legacy.

West Publishing’s Folly: Failure to Adapt to the Internet Era

From West Publishing’s early establishment and success in the late 1800s, I fast-forward to the late 1960s, and the creation of the first legal databases. The concept of legal databases first arose in the mid-twentieth century, coinciding with the development of the computer. At this time, West Publishing still had a strong reputation within the legal community. That reputation faltered, however, when West Publishing did not move quickly enough into the computer era.
LexisNexis Dominated Early Electronic Legal Databases

¶21 Computer-assisted legal research first developed in the late 1960s and early 1970s as a project of the Ohio Bar Association. The Ohio Bar, in conjunction with Data Corporation, created a product called OBAR—the Ohio Bar Automated Research.\(^50\) The creators of OBAR decided to place the full text of cases online, searchable through Boolean operators.\(^51\) OBAR’s creators wanted to shift away from West Publishing’s system of digests and indexing and to focus on the database’s search engine.\(^52\) OBAR would be nonindexed full text.\(^53\) To replace the digests and indexing of the West Publishing system that lawyers and librarians had come to rely on for research, the OBAR team created the KWIC (key word in context) system.\(^54\) If OBAR’s Boolean search operators, search logic, and KWIC system functioned efficiently, then indexes and digests would be unnecessary. OBAR became Lexis\(^55\) and in 1973 entered the market through proprietary terminals installed in law firms.\(^56\)

¶22 West Publishing responded slowly to this new challenger. Westlaw—West Publishing’s digital database—appeared in 1975, but it included only West Publishing’s headnotes (without the full text of any corresponding cases), and the search function was clunky and hard to use.\(^57\) Unlike John West, who had developed his company based on understanding and anticipating lawyers’ needs, West Publishing wrongly thought that lawyers would wish to search only headnotes. The folly of West Publishing’s prediction soon became apparent: Lexis had changed the game and surged ahead. West Publishing eventually added full text to its database in December 1976,\(^58\) but by then Westlaw had fallen far behind Lexis in terms of searchability and functionality.\(^59\) Not until the mid-1980s did Westlaw\(^60\) overcome its poor entrance and become a reliable, user-friendly legal database.\(^61\)

¶23 Despite the gains West Publishing made, the Westlaw database remained inferior to the Lexis system.\(^62\) When West Publishing first entered the digital research scene, LexisNexis responded by improving its own system. In 1980, Lexis added Nexis to its legal database, incorporating news and business reports into its

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51. Id. at 546.
52. Id.
53. Id.
54. See id. at 551–52.
55. When Lexis and Westlaw first appeared, publications frequently capitalized the entire name. It is unclear whether this was due to the companies’ own references or to distinguish the names as referents to databases. As the two names became more familiar, the capitalization was dropped. I follow the more modern usage, which capitalizes only the first letter.
56. Harrington, supra note 50, at 552.
57. Id.
58. Id. at 553–54.
59. Id. at 553; Sandra S. Gold, A Comparison of Lexis & Westlaw, U.S. L. LIBR. ALERT, Apr. 1982, at 1 (noting that “West has lagged behind [Lexis] in both depth and breadth of the database for several years”).
60. From this point forward, I use “WestlawNext” to refer to the online database and “West Publishing” to refer to the company.
61. Harrington, supra note 50, at 554.
contents. The LexisNexis team started to draft its own version of headnotes and to develop a LexisNexis equivalent to West Publishing’s Key Number System. LexisNexis began writing summaries of cases that mirrored West Publishing’s Syllabus. Perhaps most important, Shepherd’s Citations were added in 1981. West Publishing’s KeyCite did not appear until mid-1997. As a digital legal research system, Westlaw did not truly challenge LexisNexis until the mid-1980s: even then, LexisNexis still “outpace[d] Westlaw sales nine to one.” LexisNexis clearly won the first round.

Throughout the rest of the 1980s and into the early 1990s, West Publishing and LexisNexis continued to develop their databases, to enhance their content, and to add features. The companies adhered to a competitive theme, mirroring each other’s growth and innovations. For example, LexisNexis added the first state administrative code in 1988, and West Publishing added the same to Westlaw in 1989.

Fierce competition followed the two databases into the Internet era, and they continued to closely watch and mimic what the other did. Again, LexisNexis led the online movement: it was the first to create a website, establishing LexisNexis.com in 1997; Westlaw.com followed in 1998. Even as the two companies moved online, firms and customers consistently preferred the LexisNexis legal database to the Westlaw legal database.

Preference for LexisNexis continued as both databases grew and the content offered by each started to mirror the content offered by the other. Although the LexisNexis and Westlaw databases initially focused on different areas of law and on different jurisdictions, increased demand for services, the growth of the Internet, and Westlaw’s and LexisNexis’s individual desire to become the ultimate legal research database culminated in two vast systems of national information. Each became indispensable: even in 1986, LexisNexis and Westlaw “already [had] become an integral part of the arsenal of research tools available to the lawyer.”

63. Harrington, supra note 50, at 553.
66. Id.
71. Kathleen Kelly, Update VI: Westlaw and Lexis, Legal Info. Alert, Oct. 1989, at 1. As an interesting, albeit unscientific, example of West Publishing’s fall from monopolistic grace and rise back to prominence, prior to 1989 the Legal Information Alert published its annual update with the title Lexis & Westlaw. From 1989 until the publication ended in 2010, the title remained Westlaw & Lexis. The publication also added (and dropped) various other legal databases as they rose and fell in popularity, including HeinOnline, VersusLaw, and Loislaw. See, e.g., Donna M. Tuke, From the Editor, Legal Info. Alert, Jan. 2009, at 2 (noting that VersusLaw had been dropped from the annual review and anticipating that Bloomberg Law would soon be added).
73. Id. at 152.
74. Berring, supra note 10, at 28; see also SveNgaliS, supra note 72, at 149, 151.
But growth also resulted in the two companies becoming indistinguishable: as early as 1987, the two legal databases were garnering commentary because of their similarities, and that same year within law firm libraries, the term “Wexis” gained recognition. By 1996, LexisNexis and Westlaw had become “[t]wo commercial concerns providing the same [database] of information organized in the same way, even using the same search strategy.” An addition or innovation by one of the two was a “significant enhancement” until it was adopted by the other. The content competition between the two revolved around the provision of legal services, for as early as 1995, the databases (and the companies) grew mostly in services, not in customers. As such, each needed to find different ways to distinguish itself, though doing so proved difficult.

West Publishing’s Failures Were Symptoms of an Old Company

West Publishing’s failure to dominate the electronic database field in the way that it had dominated print legal publishing would have made John West shudder. West Publishing initially failed in the digital legal database competition because it did not recognize its customers’ preferences for online resources, believing instead that print resources would remain the dominant source. West Publishing had started as an innovative company but had shifted to a conservative company over time. In 1969, all of West Publishing’s top managers had risen from the ranks of the company, resulting in a team devoted to print. The company had never gone through a fiscal reorganization, a consequence of relative financial conservatism and an aversion to risks. Though West Publishing’s culture promoted good business practices, it ultimately held the company back several years, despite its potential to be the leading online database.

West Publishing’s several advantages should have guaranteed its dominance of online databases: West Publishing had already created its Key Number System and had vast experience indexing cases under that system, while Lexis had to start from scratch. West Publishing had established itself as the “quasi-official arm of the American judiciary,” so much so that judges were at first reluctant to send their opinions to LexisNexis. And West Publishing had almost a century of infrastruct-

75. Durako & Stivers, supra note 70, at 3.
78. Fritz Snyder, Update IX Westlaw and Lexis, LEGAL INFO. ALERT, Jan. 1993, at 5.
80. MARVIN, supra note 9, at 1–2.
81. Id.
82. See Gold, supra note 59, at 3 (emphasizing how much easier West Publishing’s key number and digest systems made searching, and lauding West Publishing’s case summaries).
83. Abrahamson, supra note 62, at 38.
84. In fact, when LexisNexis first began putting the full text of opinions online, it obtained those opinions from West Publishing.
ture and experience in the legal publishing market compared to LexisNexis’s paltry decade.85 ¶30 West Publishing’s apparent advantage over Lexis should have been substantial: when first creating its electronic database, “Lexis hired workers to scan and enter data from West reporters . . . . The result was a competing product that used public information but was taken from a format initially published by West.”86 Rather than capitalizing on these advantages and revolutionizing the legal research market as John West had done, West Publishing waited on the sidelines while LexisNexis reinvented the legal research field. Indeed, it was not until the late 2000s and early 2010s that West Publishing moved ahead of LexisNexis in its innovations, largely due to the release of WestlawNext and the failures of Lexis Advance.

West Publishing Speeds into the Future with WestlawNext—Maybe ¶31 In February 2010, to big fanfare, West Publishing revealed WestlawNext at LegalTech.87 West Publishing invested an estimated $1 billion in creating WestlawNext, a new, advanced product designed to mirror Google’s search engine.88 WestlawNext marks West Publishing’s first successful innovation in the Internet era: West Publishing clearly is winning the second round.

¶32 LexisNexis responded by launching Lexis Advance, initially made available to solo practitioners in October 201089 and then to all LexisNexis subscribers in December 2011.90 Lexis Advance, however, has struggled, undergone several makeovers, and generally frustrated the legal research community.91 Its failure is particularly galling considering LexisNexis’s history of dominating West Publishing in the online legal research field.

¶33 WestlawNext’s development would have made John West proud because the database tries to provide legal researchers and lawyers with what they want: ease of searching that mimics Google’s.92 Both WestlawNext and Lexis Advance bear a striking resemblance to Google, using a single search bar at the top of the databases’ respective homepages. Even more revolutionary, subscribers no longer have to choose which database to search. Previously, researchers needed to select which database they wished to search within Westlaw, whether it was secondary sources, case law within a specific jurisdiction, or statutes. In WestlawNext, researchers can

85. Abrahamson, supra note 62, at 41.
86. Krause, supra note 65, at 45.
88. SveNgalis, supra note 72, at 152.
92. See, e.g., Gail Herrera, Google Scholar Users and User Behavior, 72 C. & R.S. Libr. 316, 319 (2011) (noting that Google and Google Scholar are becoming the preferred sources for students and researchers).
search the database’s entire content through the single search bar. Additionally, in theory, WestlawNext’s Boolean operators function even better in the system through an advanced search function, making Boolean logic more effective. For many, the introduction of WestlawNext “represents a significant departure from how online legal research databases have traditionally worked.”

WestlawNext also continues to update its database system based on changes in technology and how research is done. WestlawNext added shareable folders that allow better management of research, continuation of research among different people, and organizational functions. And, in moves that John West would have approved, the database added a mobile app that is designed to seamlessly sync between computer devices and allow subscribers to shift from laptop to tablet without needing to retrace any research steps. Plus, in the spring of 2015, Westlaw incorporated Dropbox into its platform, allowing users to “drop documents directly from Westlaw.”

WestlawNext did receive complaints, however. Scholars are already concerned with the impact that WestlawNext will have on the future of legal research. In many ways, Google-like searches that do not require the user to select a database source may “assume[] a lack of skill and understanding of material, and attempt[] to reduce complex and nuanced problems to the lowest common denominator.” Commentators also express concern that when students are not required to choose a database, those students lose perspective and an understanding of the context of a case, a statute, or an administrative regulation.

Another area of potential concern is how WestlawNext’s search algorithm ranks sources. Like Google’s, WestlawNext’s search engine relies in part on users to determine the strength of its different searches. If a researcher runs a search and then clicks on a certain result in that search, the WestlawNext algorithm may assume that the result the user clicked on is the result that all users who run the same (or a similar) search will want. As a result, less-used sources could become lost underneath frequently used sources. Unskilled researchers or users unac-

98. Sellers & Gragg, supra note 93, at 344, ¶ 13.
99. See, e.g., Wheeler, supra note 95, at 374, ¶¶ 46–47; Sokkar Harker, supra note 8, at 84–85, ¶ 16.
100. Wheeler, supra note 95, at 368–69, ¶¶ 25–27. Note too, that like Google, WestlawNext does not reveal the algorithm behind its search engine.
customed to clicking beyond the first page of results could suddenly become the drivers of research results and upend the value of WestlawNext’s search algorithm.\textsuperscript{101}

\footnote{101. \textit{Id.} This is especially concerning given that studies show that many researchers rarely click beyond the first page of results. \textit{See, e.g.}, Laura A. Granka et al., \textit{Eye-Tracking Analysis of User Behavior in WWW Search}, in \textit{PROCEEDINGS OF THE 27TH ANNUAL INTERNATIONAL ACM SIGIR CONFERENCE ON RESEARCH AND DEVELOPMENT IN INFORMATION RETRIEVAL} 479 (2004); Andrew D. Asher et al., \textit{Paths of Discovery: Comparing the Search Effectiveness of EBSCO Discovery Service, Summon, Google Scholar, and Conventional Library Resources}, 74 C. \& RES. LIBR. 464, 474 (2013).}


\footnote{104. \textit{See SveNgalis, supra note 72, at 3. Some would argue that Bloomberg Law has yet to earn a place with Westlaw and LexisNexis, but its acquisition of BNA and its continuing provision of all content to law school subscribers at a steep discount make it a significant player.}}

\footnote{105. \textit{See Sokkar Harker, supra note 8, at 84–85, ¶ 16.}}

\footnote{106. \textit{See Interview with law librarian I, in Seattle, Wash.} (May 3, 2014) (notes on file with author) [hereinafter Librarian I interview] and \textit{Interview with law librarian II, in Seattle, Wash.} (May 7, 2014) (notes on file with author) [hereinafter Librarian II interview]. For a variety of reasons, my interviewees are being kept anonymous.}

§37 Concern about the impact that online research will have on the practice of law and legal research, however, arises whenever new online research tools become available. As early as 1996, commentators complained that the biggest disadvantage to online legal databases was the new “tendency among many attorneys to leap to the computer without having first conducted manual research, or to use [computer-assisted legal research] exclusively without consulting other, less costly, sources.”\textsuperscript{102}

§38 For the purposes of this article, though, the concern about WestlawNext’s impact on legal research only serves to emphasize that West Publishing will continue into the future as a major player in legal research. The creation of WestlawNext, the constant updates being made to WestlawNext, and the relative failure of LexisNexis to offer a competitive product\textsuperscript{103} have placed West Publishing in a strong position relative to the future. WestlawNext’s success, though, also provides additional monetary incentive for those companies seeking to enter the legal database market.

\textbf{The Rise of Smaller, Niche Databases: Challengers to West Publishing?}

§39 Since 1977, the number of major legal electronic subscription databases has decreased from more than twenty-five to three.\textsuperscript{104} The legal research market is a tough one to break into: WestlawNext and Lexis Advance market themselves as one-stop shops. For law students, these two databases are frequently the only sources of legal information.\textsuperscript{105} For practicing attorneys, the two databases are among the most-used sources for research.\textsuperscript{106} For library patrons, whether in law school librari-
ies, law firm libraries, or public law libraries, Westlaw and LexisNexis are the preferred databases. And even for law librarians, these two databases still stand as top sources of information.107

Companies Will Always Want to Enter the Legal Research Market

¶40 “Legal publishing is undoubtedly one of the most dynamic sectors of the American economy, evolving into a multi-billion dollar business that has attracted the interest of leading foreign investors.”108 Legal research is always an enticing market because of the law’s heavy reliance on easily accessible, accurate legal information. Despite West Publishing’s and LexisNexis’s dominance, small (and large) companies continue to enter the market. Part of the draw to new market entrants can be explained by the sheer amount of money available, but the legal research market is also attractive to new companies because the law constantly grows and because much of the legal information relied on by attorneys, librarians, and law students is publicly available but not easily accessible. The legal research market thus offers a unique opportunity for value-added services. As technology develops and as the amount of legal information available increases, new entrepreneurs with new products that creatively and uniquely aid lawyers in their research will become only more prevalent.

The Amount of Law Constantly Increases

¶41 Smaller, niche databases can compete with WestlawNext and Lexis Advance because the sheer amount of information available cannot be contained in a single database. An astounding amount of legal information exists, and it grows (and will continue to grow) at an incredibly rapid pace. Consider just the snippet of legal materials made up by federal cases: in 1972, 43,000 opinions were published; in 2012, there were 75,000.109 In 1972, sixteen volumes were added to the Federal Reporter; in 2012, there were thirty-nine volumes published.110 Even in the 1880s, the number of cases was “staggering.”111 For statutes, a database must collect and index any updates from every legislature in all fifty states, plus the federal government, at least once a year. Statutory amendments, bills, and laws passed but not yet codified must also be collected. It is an intimidating amount of information.

¶42 Cases and statutes are not the only sources of legal information, however. Law firms’ transactional practices require accurate business and market information on companies and accessible databases with financial data, for example. Any service of process requires people-finder information and skip-tracing data.112 Regulatory attorneys must have access to administrative materials in addition to

107. Librarian I interview, supra note 106.
108. SvenGaliS, supra note 72, at 3.
110. Id. Even the quantity of volumes—thirty-nine—is misleading: that number includes only published cases, which account for less than twenty percent of cases in the federal courts. Id.
111. Cheskis, supra note 2, at 8; see also Hanson, supra note 3, at 564, ¶ 5 (calling the volume of recorded common law information “toxic”).
112. Librarian I interview, supra note 106; Librarian II interview, supra note 106.
applicable regulations. Additionally, materials frequently need to be available at both the federal and state levels.

¶43 Niche and smaller databases thus have a fighting chance to compete against WestlawNext and Lexis Advance because the amount of information that needs to be processed and available for legal researchers is astronomical. Niche and smaller databases can also capitalize on legal researchers’ need to update search results: legal information used by attorneys, judges, and librarians must be current to be accurate. The legal community relies on a vast amount of information, and West Publishing and LexisNexis will never be able to collect all of that information, much less provide the same level of service within their platforms for all available information to the extent they do for cases and statutes.

**Almost All Legal Information Is Publicly Available**

¶44 The sheer amount of legal information is only part of the picture, however. Another reality is that much of the material behind the paywall of legal databases is publicly available information. This means that the underlying content of many databases, such as cases, statutes, and regulations, are public domain material, exempt from copyright protection.113 It can be galling to look at the information in WestlawNext and Lexis Advance and realize that the two databases are “virtual monopolist[s] of a great deal of free, public legal materials.”114

¶45 West Publishing and LexisNexis based their businesses on adding value to this public domain information. The two companies index cases and statutes, provide updating services, and link to other relevant documents within the system. Ultimately, a legal database must set itself apart from others not by its public domain content but by its value-added content.115 “The companies in the best position to prosper in the coming years will be those which provide ‘value-added’ information.”116 At the same time, companies need to protect the vast amount of labor and “information” that goes into every document uploaded to a database, whether it be indexing, paginating, editing, hyperlinking, adding headnotes, creating access points, or simply harvesting information from government websites.117 Consider the legal battles that occurred over several decades between West Publishing, LexisNexis, and other legal publishers regarding star pagination and licensing of both headnotes and Shepard’s Citations, among many other disputes.118

¶46 These two realities of the legal research market (vast amounts of information and publicly available information) continue to attract new market entrants. A new company’s success and commercial viability in this market will ultimately depend on the unique value-added services it offers and its ability to protect that value from competitors.

115. See, e.g., *Svengalis*, *supra* note 102, at 10.
116. Id.
118. For a more in-depth discussion of these legal battles, see *Svengalis*, *supra* note 72, at 10–11, and Cheskis, *supra* note 2, at 2–3, 13–25.
Smaller, Niche Companies Can and Do Challenge WestlawNext

¶47 Many smaller companies, enticed by the legal research market, created databases that they hoped would challenge West Publishing and LexisNexis. Most failed. In 1977, there were at least twenty-three legal publishers; as of 2014, three umbrella corporations controlled the vast majority of legal research: Thomson Reuters, which owns West Publishing; Reed-Elsevier, which owns LexisNexis; and Wolters Kluwer, which owns Aspen Publishing, CCH, and Loislaw.119

¶48 A few other competitors make up a significant portion of the remaining market: Bloomberg Law, HeinOnline, and FastCase. But previous failures of smaller companies do not teach the right lesson: WestlawNext and Lexis Advance do have gaps in coverage of legal material, ripe for filling by smaller companies. Additionally, WestlawNext and Lexis Advance have weak coverage in some areas, again providing a niche for another database to fill. Finally, researchers demand user-friendly search platforms that allow subscribers to find the information that the researcher needs, and they require accurate and current databases that are constantly updated so that subscribers can trust the content. It is impossible for two databases to meet these high research demands for every legal researcher. WestlawNext and Lexis Advance may be attempting to become one-stop shops for all legal research. But they are not, and likely never will be.

Westlaw and LexisNexis Are Not One-Stop Shops, and Niche Databases Are Offering Alternatives

¶49 WestlawNext and Lexis Advance take advantage of peoples’ desire for ease of access that does not require shifting between databases to research different topics. But both databases are incredibly expensive, increasing in price at a rate that appears exponential at times.120 Cost factors into researchers’ decisions as to which database to use. Additionally, neither database can maintain the amount of legal information available or the amount of legal information that all legal professionals (attorneys, law professors, law students, law librarians, paralegals, etc.) may need in any given situation.

¶50 Thus, smaller alternatives to WestlawNext or Lexis Advance are frequently good sources of limited types of information that cater to various legal information niches. HeinOnline, for example, provides access to law reviews and bar journals back to the periodical’s inception, a service not offered by Westlaw or LexisNexis. Another competitor, Casetext, allows users to comment on and analyze cases, statutes, and regulations, combining legal research with crowdsourcing to create annotations that can be “upvoted,” i.e., bumped to a higher position, if readers find them more useful. Business development and competitive intelligence databases such as Accurint and TLO allow users to search for information in public records and to locate witnesses through skip traces. BNA’s Portfolios, especially the tax, labor, and employment portfolios, are other excellent examples of a company stepping into a gap left by WestlawNext and Lexis Advance. Ravel Law provides visualizations of

120. Id.
relevance and precedent, a feature both WestlawNext and Lexis Advance sorely lack. But success outside WestlawNext or Lexis Advance can be difficult to maintain: Practical Law, which tailors its information to business attorneys seeking information such as checklists or standard documents and clauses, and offers efficiency tools such as brief banks and market updates, was acquired by West Publishing. Knowledge Mosaic, which allows subscribers to search SEC filings and provides model documents and law firm memos, is now owned by LexisNexis.

§51 Small law firms and solo attorneys are targeted by Casemaker and FastCase, which provide free access through an attorney’s bar membership. Even larger firms encourage attorneys to use these cheaper alternatives rather than relying on WestlawNext or Lexis Advance. State and local government websites too are loading more primary law sources (such as statutes, codes, and cases), making those materials more accessible to anyone. Though some government websites are clunky, and some are almost unusable, others provide effective access points to the legal information available in their databases.

§52 Smaller, niche databases can also offer alternative solutions to the concerns raised by scholars about WestlawNext. HeinOnline provides an excellent example of how forcing a researcher to choose a smaller, more limited source can impact research quality. Although HeinOnline does allow a researcher to search the entire subscription database, the search engine is not intuitive, and filtering search results is a demanding, often futile task. The researcher who first chooses a smaller library within the HeinOnline database, however, has a far greater chance of locating a relevant source. A search within HeinOnline’s Law Journal Library database, for example, yields far different results than does a search within HeinOnline’s U.S. Congressional Documents database. Researchers must understand what they are seeking and what each database contains to yield optimum results.

§53 Last, smaller, niche databases can highlight weaknesses in WestlawNext’s and Lexis Advance’s coverage. Consider research in foreign and international law. Although both WestlawNext and Lexis Advance offer some international and foreign law in their databases, the information is not comprehensive and is limited to only a few countries. Experienced researchers know that neither database is a strong

122. Librarian II interview, supra note 106.
123. For example, consider the North Carolina Court System’s publication of opinions from the North Carolina Court of Appeals and Supreme Court: opinions are available back to only 1998, limited searching is available, and opinions can be browsed only by clicking into a zip file of opinions from a single year. N.C. Appellate Courts, N.C. COURT SYSTEM, http://appellate.nccourts.org/opinions/ (last visited July 5, 2015).
124. Examples range from DeKalb, Illinois, which posts its municipal code on its website though it does not have a search function other than the page search function, see Office of the City Clerk, MUNICIPAL CODE, http://www.cityofdekalb.com/CityClerk/ Municipal_Code.htm (last visited July 5, 2015), to the City of Lynn, Massachusetts, through which I could locate its code only by searching the website, at which point a static PDF file could be found, Welcome to the City of Lynn Website, CITY OF LYNN, http://www.cityoflynn.net/index.shtml (last visited July 5, 2015), and CITY OF LYNN ORDINANCES, http://www.ci.lynn.ma.us/cityhall_documents//clerk/2013/City_Ordinances.pdf (last visited July 5, 2015).
125. See supra ¶¶ 35–36.
starting point for foreign or international law. A smart foreign or international legal researcher would start with GlobaLex, with the ABA's International Law Section, or with the Foreign Law Guide, or even with a non-updated print resource such as Germain's Transnational Law Research. International organizations are also better alternatives to WestlawNext or Lexis Advance: both the United Nations and the European Union archive documents and allow access to the respective organization's documents, as well as organization-specific research guides.

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

West Publishing and LexisNexis are aware of the gaps in their coverage and of the need to fill them. Both companies are responding to evolving research needs organically—for example, through the development of new search tools such as WestlawNext and Lexis Advance—and through expansions like West Publishing's purchase of Practical Law and LexisNexis's acquisition of Knowledge Mosiac. Because of their size and available resources, West Publishing and LexisNexis are also better positioned to take advantage of coming technological changes and anticipated technology revolutions. The companies could research and implement new innovations such as network analysis, which “evaluate[s] the strength of a precedent by considering how much other cases rely on it,” effectively allowing WestlawNext or Lexis Advance to determine which precedents should be used in a given situation. With established reputations and impressive revenues, West Publishing and

126. LexisNexis does have some foreign and international law sources, but compared with the other available databases, it is surprisingly weak.
LexisNexis each have an array of options for how best to remain competitive. But both companies must remain vigilant in exploring and implementing changes or their respective market shares will be stolen by niche competitors entering the legal research market.

*Can Bloomberg Law Prove a Competitor?*

§56 One of the newest, and certainly the largest, challenger to West Publishing and LexisNexis is taking a different approach than that of the smaller, niche databases. Rather than fill in gaps, Bloomberg Law is attempting to challenge Westlaw and LexisNexis as an equal. Backed by the Bloomberg name, money, and experience, Bloomberg Law has the potential to eliminate the competitive duopoly. It does have some advantages. First, it owns BNA, a well-respected database heavily relied on by tax, labor, and employment researchers.136 Second, due to Bloomberg L.P.’s reputation as a securities and stock market corporation, Bloomberg Law has immense drawing power in its tax, securities, business, and corporate resources.137 Finally, Bloomberg also offers its database to law schools at a significantly reduced subscription price in an attempt to entice law students to its platform before those students enter the legal world.

§57 But Bloomberg Law faces several challenges as it tries to compete with two well-entrenched companies quite unwilling to relinquish control over any aspect of the legal research market. Within law firms, Bloomberg Law costs as much as WestlawNext or Lexis Advance. Bloomberg has not mastered the sales pitch and advertising techniques of WestlawNext and Lexis Advance. For example, though Bloomberg Law launched in 2009, it only recently appeared in law schools. Law firms and law libraries are reluctant to pay for a third database that does not appear to offer substantially different material than that already offered by WestlawNext, Lexis Advance, and other smaller and cheaper niche databases. Bloomberg Law has not yet fully developed indexing, digest, or citator services robust enough to compete with WestlawNext’s and Lexis Advance’s equivalent services. Last, Bloomberg Law currently only offers a single subscription option: subscribers must pay for all content, at a rather hefty price. WestlawNext and Lexis Advance continue to offer flat rate and subscription options, allowing subscribers to bundle and to choose which database streams will be part of the subscription.138 Ultimately, Bloomberg Law may become a temporary experiment by a large company attempting to fight its way into the billion-dollar legal research market.

*Conclusion: The Continued Dominance of John West*

§58 As a businessman, John West saw a gap in legal information: lawyers needed efficient and inexpensive access to recently published cases. Driven by the demands of his customers, John West provided uniform access to cases, he created an indexing

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136. Librarian II interview, supra note 106.
service for those cases, and he delivered these services inexpensively, quickly, and reliably.

¶59 Because of his business acumen and willingness to listen to customers, John West and his business made a substantial profit. The company that he started in 1872 makes an even more substantial profit now and has ingratiated itself so much within the legal community that many find it difficult to imagine legal research without West Publishing.

¶60 But it is entirely possible that in ten years, West Publishing will no longer exist, unable to survive the technological and cultural changes of the future. Smaller, niche databases are developing increasingly sophisticated systems, and many of those databases are significantly less expensive than WestlawNext. Additionally, many of these new legal research companies have attracted the attention of venture capitalists willing to provide the seed money and resources to support a new company. A large corporation such as West Publishing cannot adapt or innovate as quickly as smaller, more flexible companies. An increasing amount of legal material is easily available for free. Calls for open access are gaining popularity and support.

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

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

¶63 But West Publishing’s future depends largely on its ability to read the market, to change and adapt to consumers’ needs, and to offer a product that continues to meet and exceed lawyers’, professors’, students’, and librarians’ expectations of a legal research database, especially in light of WestlawNext’s current cost. West Pub-
lishing’s future also relies on its ability to work with its subscribers to create a product that is feasible and affordable for both West Publishing and its subscribers. John West’s desire to provide inexpensive access to materials must again become a dominant marker for West Publishing.

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

¶65 John West established a company that has transformed into something he likely never imagined: a company owned by a global conglomerate that leads the online legal research world in both technology and cost. He founded West Publishing with the goal of providing uniform, efficient, and inexpensive access to legal materials, in response to the needs of lawyers. As West Publishing’s history demonstrates, the company succeeded when it adhered most closely with these simple goals. And as long as West Publishing responds to the needs and demands of the legal community, as it did when John West himself ran the company, it may have the chance to evolve with, or even to lead, the legal research industry in the next century.\textsuperscript{143}

\textsuperscript{143} The company may have the chance: West Publishing’s president has stated that innovations by the competition “invigorate” the company, “making [West] revamp to become nimbler and quicker.” Baker, \textit{supra} note 113, at 44.