

Here's That Court Rule, Your Honor— on My Kindle (Nook, iPhone, iPad)

By Jan Bissett and Margi Heinen

Are you among the 29 percent of Americans who own at least one digital reading device?¹ Does your travel bag include an electronic version of a good book rather than the printed page? The popularity of electronic fiction and nonfiction from bookstores and public libraries has not gone unnoticed by our friends in the legal publishing business. What might you consider if you're looking to extend the use of your digital device to legal research, and what might be of concern?

What is an e-Book?

First, what is an e-book? "An electronic book... is a text- and image-based publication in digital form produced on, published by, and readable on computers or other digital devices."² An e-book is downloaded from a publisher or library onto your reading device, be it a Kindle, Nook, iPad, laptop, or other device, including your web browser.³

Most legal researchers are familiar with electronic web versions of materials that have long resided in the law library—for example, *Law Journal Press* "publishes print and online editions of over 140 books on a broad range of legal and business topics.... Online editions are updated automatically and offer enhanced features—searchable text and index, one-click access to fully integrated cases and statutes, and tools for bookmarking, organizing, and printing research."⁴ This online edition is not a true e-book, but a licensed subscription that the researcher accesses via the web rather than downloading in its entirety. Classic treatises such as *Collier's on Bankruptcy* via LexisNexis, *Couch on Insurance* via Westlaw, or the *Federal Securities Law Reporter* via Wolters Kluwer's Intelliconnect are also not e-books, but databases.

The manner of access is important to distinguish as the commercial legal publishing world is adapting and promoting e-books as standalone purchases. In Colorado, Bradford Publishing is well known for its practitioner treatises and forms, and its website now proudly touts the addition of e-books for download.⁵ Thomson Reuters (West) eBooks on Proview™ (iPad app)⁶ and LexisNexis eBooks^{®7} provide a growing catalog of e-book offerings.

How Many Formats Make Economic Sense for Legal Researchers?

The advent of e-books in legal publishing highlights issues that have been percolating for some time: the disparity between solo practitioners and larger law firms in obtaining research resources, and the pricing structures and licensing restrictions of print versus electronic content. Currently, many legal e-books appear as court rules volumes and deskbooks, which many attorneys need, and replacing discrete print volumes with e-books is not a big leap. However, the difficulties in obtaining large treatises through e-books will be exacerbated for firms in which economics dictate a sharing arrangement; e-book licensing may not make sharing easy. For example, if an attorney or firm already has a contract to access Westlaw and

has a need for *Couch on Insurance*, what is the benefit of purchasing *Couch* as an e-book? As we struggle with budget priorities and evaluating duplicate print and database materials, e-books add another dimension, as law firms or academic law libraries may inadvertently purchase duplicate materials to the detriment of their bottom line. How many different formats make economic sense for attorneys, which formats might be necessary for proper citation or confident authentication, and which formats simply improve the bottom line for vendors?

Management Concerns and Considerations

How do you determine if an e-book is right for you, and what administrative concerns exist for e-books that don't exist for the print version of the same treatise? Technical feasibility, functionality and reliability, vendor support, supply, and licensing are the key issues identified in a recent International Federation of Library Associations and Institutions publication.⁸ E-books use a variety of formats and not all formats work with every device.⁹

The primary concern after determining availability is the functionality of the product: Is your e-book a basic flip-the-pages electronic book or can you add notes and bookmark pages? Is the index comparable

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to the print version or can you search the e-book? Legal researchers are often interested in parts of the whole, not the complete work. Can you print or download only one or two pages? Can you cut and paste from the e-book? Authentication issues are also of concern: Can you easily tell the date, edition, and other publication details? Can you cite to the publication by page number? Can you determine when updates are due and link up to receive updated materials? Does your firm need archived materials or just the current versions? Security issues are just as important. How will your technology department handle these myriad devices? If you limit the devices, do you limit access to legal research choices?

Which Concerns are Best Addressed by Your Librarian?

Several perceived concerns about the use of e-books come from the experiences of our public and academic library colleagues. Long-term preservation; licensing and ownership rights; confidentiality; and digital-rights management including archiving, borrowing, and lending rights are all points of discussion.¹⁰ The fact that public and academic libraries access their e-book collections differently further complicates matters. For example, many public libraries use digital-download platforms that allow materials to be borrowed for a specific period, after which they're removed from the reading device.¹¹ Academic libraries, meanwhile, tend to subscribe to e-book collections from vendors or aggregators providing access to many publishers' resources.¹² Aspects of both these models may be of interest to private law libraries.

The success of e-books reflects the growing popularity of digital reading devices. While the format and devices may be familiar to many leisure readers, their use in legal research has been limited, but is growing. Law librarians and library associations are on the front line in assessing how e-book trends may affect research collections, the way those materials are used, and developments in pricing strategies.¹³

Recent headlines have described the Justice Department lawsuit against Apple and five large publishers for conspiring to raise

e-book prices. As this article goes to press, some publishers are apparently settling with the DOJ, and others continue to deny wrongdoing.¹⁴ While the two major legal publishers are not included in this litigation, pricing strategies and tying arrangements have been the subject of recent discussion on a law library listserv¹⁵ and should be of concern to all legal researchers. With the rise in e-readership and tablet usage continuing,¹⁶ legal publishers will respond by offering e-books on different platforms and with pricing and licensing that will require careful analysis by potential purchasers. ■

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FOOTNOTES

1. Lee Rainie, *Tablet and E-book Reader Ownership Nearly Double Over the Holiday Gift-Giving Period* <<http://libraries.pewinternet.org/2012/01/23/tablet-and-e-book-reader-ownership-nearly-double-over-the-holiday-gift-giving-period/>>. All websites cited in this article were accessed April 9, 2012.
2. Gardiner, *The Oxford Companion to the Book, Book Excerpt, Chapter 19: The Electronic Book*, *The Wall Street Journal*, March 4, 2010, available at <http://online.wsj.com/article/SB10001424052748704187204575102110426333220.html?mod=googlenews_wsj>.
3. Geoffrey Fowler, *Following Google, Amazon Opens Kindle Books to the Web* <<http://blogs.wsj.com/digits/2010/12/07/following-google-amazon-opens-kindle-books-to-the-web/>>.

4. ALM, *Law Journal Press* <<http://www.alm.com/lawjournal-press/>>.
5. See Bradford Publishing Co <<http://www.bradfordpublishing.com/Attorneys/Books-and-Publications>>.
6. See Thomson Reuters, *eBooks on Proview™* <<http://store.westlaw.com/products/digital/ebooks-proview/default.aspx>>.
7. See LexisNexis®, *eBooks* <<http://www.lexisnexis.com/ebooks/>>.
8. Sharon Johnson, *Key Issues for e-Resource Collection Development: A Guide for Libraries* <http://www.ifla.org/files/acquisition-collection-development/publications/IFLA_ELECTRONIC_RESOURCE_GUIDE_DRAFT%20FOR%20COMMENT.pdf>.
9. Treadwell, *The Use of E-Books in Law Libraries: Legal Libraries Face Special Challenges in Adopting E-Books, But the Pressures to do so Will Only Grow Greater Over Time*, *Information Outlook*, July 1, 2011, available at <<http://readperiodicals.com/201107/242792221.html>>.
10. Charles Hamaker, *Ebooks on Fire: Controversies Surrounding Ebooks in Libraries* <<http://www.infotoday.com/searcher/dec11/Hamaker.shtml>>.
11. Treadwell, n 9 *supra*.
12. *Id.*
13. See Catan, *U.S. Warns Apple, Publishers: Justice Department Threatens Lawsuits, Alleging Collusion Over E-Book Pricing*, *The Wall Street Journal*, March 8, 2012, available at <<http://online.wsj.com/article/SB10001424052970203961204577267831767489216.html>>.
14. Catan, *U.S. Alleges E-Book Scheme: Lawsuit Says Apple, Publishers Colluded to Raise Prices; Three Will Settle*, *The Wall Street Journal*, April 12, 2012, available at <<http://online.wsj.com/article/SB10001424052702304444604577337573054615152.html>>.
15. Law Lib Discussion List, *Wigmore on Evidence, TR's Combined Annotated Statutes and Annotated Rules*, April 12, 2012 <<https://lists.ucdavis.edu/sympa/arc/lib/2012-04/msg00104.html>> [subscriber access only].
16. Pew Research Center, *Pew Internet & American Life Project, The rise of e-reading*, April 5, 2012 <<http://libraries.pewinternet.org/2012/04/04/the-rise-of-e-reading/>>.