

with telephone modem and printer. Within Illinois, the College of Lake County coordinates group discounts to DIALOG for libraries who place \$1,000 "on account" each October. NILRC survey respondents estimated the annual direct online search costs ranging from \$200 to \$6,000 per year. Sixty-four percent had annual costs less than \$900. The average direct cost per search was \$7.77.

In response to "insufficient anticipated use," the NILRC survey showed that the number of searches per college ranged from 29 to 1,022 per year, with 71% conducting fewer than 100 searches per year. Among the colleges reporting searches by patron category, 30% searches were for faculty, 13% for administration/staff, 39% for students, and 18% for other patrons. Although use of online search services is low, access to the information resources is provided.

Finally, in response to "insufficient personnel," the survey showed the amount of staff time required for online searching was low. Seventy-two percent estimated staff time devoted to online

search services during the academic year to five hours per week or less.

In conclusion, academic libraries, especially community colleges, consider online search services as a part of their overall library service in support of the college's instructional program and institutional mission. Funding availability and philosophy determine the interpretation of equal access to information within budgetary constraints. Fee structures can range from simple to complex, from free to the patron to cost-recovery. Structures consider the patron status (student, staff, external), the search category (basic or specialized), and pricing goal (token, discount, or cost-recovery). Community colleges tend to provide free online services to faculty, administration, staff and students more frequently than other academic institutions. Implementing online search services need not be prohibitively expensive to initiate or maintain and will not only provide enhanced reference service but also will improve the image of the library. ■■

In defense of FIRST and freedom of access to information

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Campus-based information service ruled no challenge to private enterprise in Arizona.

FIRST, the Fee-based Information and Research Service Team at Arizona State University Libraries, was challenged in July 1988 by an information broker marketing online database searches to

clients in the Phoenix metropolitan area. The challenge was brought under the Arizona Private Enterprise Law, ARS 41-2751, which constrains the publicly-funded community colleges and universi-

ties in Arizona from providing to persons other than students, faculty, staff, and invited guests, any services which are available in the private sector. If it had been successful, this challenge would have had far-ranging implications for the provision of information and reference services to off-campus clientele by state-funded university libraries.

The ASU Libraries created FIRST in response to information requests from outside clientele which had placed a heavy burden on reference and information services both in the main Hayden Library and in the Daniel E. Noble Science and Engineering Library. The increasing demands of off-campus users for specialized research assistance, online searching, and expedited interlibrary loan led to the development of a separate library unit that would provide these services for a fee. During the process of examining the need and the feasibility of establishing a fee-based service, the Libraries obtained a favorable opinion from the university's general counsel that the proposed service is consistent with, and offered as part of, the public service mission of the university.

The two-year pilot program began in January 1987 when a corporate services librarian was hired to assess the needs of the off-campus users; if sufficient demand was demonstrated, the librarian would develop and implement a business plan for the new service. By July 1987 the service had a name (FIRST), an identifiable presence in the information/library community, and a growing client base of satisfied users.

Nine months after the service started, an information broker in the private sector learned of the service at ASU. Richard Mauzy, president of Online Newslink, Inc., is a private investigator who uses online computer databases as a supplement to investigative research. In order to expand his business and his client base, he began to learn about the information industry and the role of the information broker. His decision to become an information broker specializing in online database searching coincided with the growth of FIRST at ASU.

On June 23, 1988, Mauzy filed a complaint with the Arizona Board of Regents and the state's Private Enterprise Review Board claiming unfair competition under Arizona Revised Statute ARS 412751, which limits the state's publicly funded universities and colleges from competing in the private sector in the offering of goods and services, except where these activities support the teaching, research, or public service mission of the university.

In defense of FIRST, the university claimed protection under the public service clause of the statute, reaffirming the opinion given to the ASU Libraries before the service began. Also, the university's response included a statement that the information services provided by FIRST are an extension of the traditional library services which have always been available to the general public and that these services do not constitute a new venture.

The first step in the procedures prescribed by law was a settlement hearing where both parties met and conferred. Once compromise seemed unlikely, the complainant then requested a hearing before a subcommittee of the Arizona Board of Regents. At this hearing, on August 23, 1988, the subcommittee heard four hours of testimony. In its recommendations to the full Board, the subcommittee found that the services of FIRST fell within the public service mission of the university. The subcommittee suggested, however, that prices for the service reflect all costs, both direct and indirect.

The complaint was then referred to the Private Enterprise Review Board, an eight-member panel created by the Arizona Legislature to protect small businesses from unfair competition by the universities. Six members of the Review Board are engaged in private enterprise, three of whom represent the small business community. The other members of the Review Board represent the community college district governing board and the Board of Regents.

At its January 18, 1989, meeting, the Review Board heard testimony from the complainant, Richard Mauzy of Online Newslink, Inc., and from the respondent, represented by ASU General Counsel, Bruce Meyerson, and three witnesses: Maxine Reneker, associate dean of university libraries for public services; Helen Josephine, information manager of FIRST; and Pat Wood, a local law librarian and board member of the Arizona State Library Association.

Meyerson provided the university's interpretation of the legal issues involved, including the observation that there is no legal precedent for restricting the information activities of a library. Reneker's testimony included an overview of the broad range of services offered by the Libraries to off-campus users, and a history of the demands of these users which led to the creation of a separate unit to provide improved service. In addition, she raised questions concerning the constraint of FIRST and the impact it would have on the Libraries' ability to provide access to library resources and other services to its off-campus clientele.¹ Josephine described the services offered by FIRST and the steps involved in answering a patron's request. As a client of FIRST and as an information professional, Wood explained how important the services of FIRST are to individuals, businesses, and special libraries by detailing the steps required and the delays experienced in obtaining information and documents before FIRST was created.

After hearing the arguments and questioning the witnesses, the Review Board unanimously passed a motion in favor of the respondent, Arizona State

¹The full text of Reneker's testimony and additional commentary on the implications of the challenge to FIRST may be found in *Online Libraries and Microcomputers* 7 (February 1989): 2-5.

University. However, the Board recommended that ASU discontinue advertising its service in the telephone yellow page listings. Individual members of the Board expressed sympathy with Mauzy's struggle as a small businessman, but they also affirmed that access to information is too important to restrict in any way.

FIRST, currently in its second year of service, has over 700 clients, including large corporations, small businesses, law firms, consultants, inventors, and other individuals. Its services are priced to recover both direct costs of operations, such as online vendor search fees and connect time, photocopying and delivery costs, and indirect costs of operation within the university structure, determined by a formula similar to that used to recover the costs for sponsored research. Demand for FIRST's services continues to grow; the revenue from document delivery substantially exceeds the revenues from research services and online database searching. FIRST also provides translation and referral services, and is exploring the market for seminars on library research.

The challenge to the services of FIRST in Arizona should be viewed in the context of the questions being raised nationwide concerning the provision of services by universities that have real or potential impact upon the ability of small businesses to successfully market similar services. A September 7, 1988, article in the *Chronicle of Higher Education* reports that 12 states have passed, or are in the process of passing, legislation restricting the business-related activities of universities. In Colorado and Iowa, the legislation is broadly written; in other states the law is much narrower. In Idaho the legislation refers specifically to the sale of hearing aids; however, it is viewed as a first step toward restricting other services or the sale of other items by the university.² At the second conference on Fee-Based Research in Colleges and University Libraries, Miriam Drake commented on similar legislation in Louisiana and Pennsylvania. In addition, she reported on the investigation of the General Accounting Office concerning the business activities of universities and other not-for-profit organizations, prompted by the allegations of small businesses that these organizations have too much of a competitive advantage in the sale of goods and services. In Drake's view:

"If the university defines services to business and industry in its mission statement, then fee-based library and information services might be considered part of its usual business. Under some of these statutes private business could bring action.... Ultimately, these issues will be decided in the courts but will depend on the state law, interpretation of

²Scott Jaschick, "Three More States Adopt Measures to Restrict Campus-Run Businesses," *The Chronicle of Higher Education*, September 1988, A1 and A18.

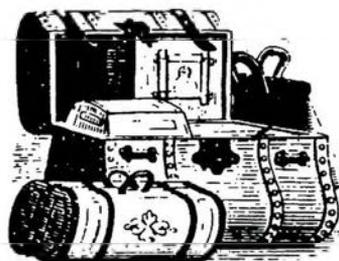
the tax code, the mood of the judge, and how well the university has defined its mission."³

In view of the enactment of legislation to limit business-related activities of universities, the opinion of the Arizona Private Enterprise Board in reviewing the challenge to FIRST will provide precedent for defense of similar library services. Libraries in states with similar legislation should review their statutes carefully, obtain appropriate legal counsel in advance of the establishment of fee-based services, and take care to ensure that the mission statements of both the parent organization and the library articulate a public service mission to off-campus clientele.

Had the challenge to FIRST in Arizona been successful, the way would have been opened for other challenges to services such as circulation of materials which are also available for sale in local bookstores, the provision of reference information from sources used by private information brokers, or tours and instruction in the use of the libraries to off-campus clients. Libraries offer access to a variety of information sources—both for a fee and free. For example, online searching is offered at no charge, at cost, and at full-cost recovery; dial-in access to online catalogs is offered for a fee or by subscription; CD-ROM workstations with access to databases are offered free, or a nominal fee is charged for printing citations.

Obviously many public and academic libraries offer online searching through commercial vendors, document delivery, and online catalogs with multiple databases, all of which could be viewed as competition with private information brokers. Testimony during the challenge to FIRST revealed the opinion of several witnesses that the only legitimate service an academic library should offer to off-campus clientele is the issuing of borrowers cards and access to photocopy machines to copy non-circulating material. If this view had prevailed, the citizens of Arizona would have had their access to the information resources of the ASU Libraries and other publicly funded libraries, greatly curtailed. ■■

³Miriam A. Drake, "Policy: Help or Hurdle?," in Conference on Fee-Based Research in College and University Libraries, *Fee-Based Services: Issues and Answers*, Anne K. Beaubien, comp. (Ann Arbor: Michigan Information Transfer Source, University of Michigan Libraries, 1987), 54.



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