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## Live Virtual Reference and the Database Dilemma

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Live virtual reference programs in the university setting have blossomed in recent years as librarians have aspired to become as “virtual” as the resources they offer. While some libraries have chosen to limit their service to affiliated members, many have preferred to open their programs to the wider community.<sup>1</sup> The motivation to do so is perhaps particularly strong among public university librarians, who often feel a dual responsibility to their own affiliates and to the citizens of their state. However, the decision to offer a chat reference service to the public raises a number of legal, ethical, and practical questions concerning the use of subscription databases.

Although some librarians place non-affiliated chat patrons in the same category as walk-in patrons, to whom database access is generally allowed, most consider the use of subscription databases with non-affiliated patrons to be a clear violation of licensing agreements – and herein lies the dilemma. Do these access restrictions place an unreasonable burden on the chat librarian, who must determine the patron’s affiliation and adjust the level of service to match the patron’s status? Is a two-tiered service, in which some patrons receive more in-depth answers

than others, ethically acceptable? Can libraries devise strategies to minimize these apparent discrepancies in service? Discussion of these questions has been largely speculative and has provided few useful conclusions or guidelines for the practicing virtual librarian. This study attempts to examine the issue through the prism of real questions in a functioning, live virtual reference program: the QuestionPoint chat service at the University of Alabama. The goal of the study is three-fold: 1) to define the issues in the context of current discussion in the field; 2) to assess the nature of the problem as evidenced by transcripts of actual live virtual reference exchanges; and 3) to evaluate the options available to librarians who must find alternative sources when database use is not permitted.

### Defining the “Virtual Patron”

The virtual user is a relatively new species of library patron, and neither libraries’ policy statements nor database licensing agreements appear to have fully incorporated this category. Because few licensing agreements directly address the question of database use with the virtual patron, librarians have been tempted to equate the virtual user with other, more familiar types of patrons. Most attractive of these equations, perhaps because most expansive, is the definition of virtual reference patrons as “virtual walk-ins.” Bernie Sloan, whose online “Digital Reference Services Bibliography” has guided many start-up programs, has floated this idea on several online library

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<sup>1</sup> In a 2001 survey by the Association of Southeastern Research Libraries (ASERL), more than 80% of responding libraries (24 of 29) reported that they offer live virtual reference service to non-university as well as university patrons. Survey results are available at <http://www.aserl.org/projects/vref/surveysumcomplete.htm>.

lists and has received mixed responses. In a question to the DIG\_REF discussion list, dated September 27, 2002, he reported that database use in the virtual reference setting had been a topic of discussion at two recent conferences; he concluded, "The consensus was that this should be no different than serving a walk-in patron who asks for help at the physical reference desk. With most vendor licenses, it is OK for a walk-in user to make use of licensed e-resources." He noted, however, that this comparison is not perfect, and ended his query with a qualification: "But when it comes to providing virtual reference service . . . the licensing terms and conditions are less clear" (Sloan, 2002).

An online publication from Nylink, a group of New York State libraries, argues the case more emphatically:

If a digital reference service provides service to non-constituent users of the library, and provides them with access to searching via escorted use, or to content, say with access to a single full text article, is that within the license agreement? When a non-constituent user comes into a library to use resources, they are often allowed to use the available online resources that the library makes available to its own patrons. It could be argued that the provision of content via a digital reference service is doing the very same thing, and is in fact more controlled because the librarian is escorting the access. (Nylink, 2003)

Well, maybe. The fact that access is "controlled" does not necessarily mean that it is legal. By this logic a little bit of theft is acceptable, even if a lot is not. Tempting though the walk-in analogy

may be, it does seem to challenge the spirit, if not the letter, of most licensing agreements.

A more conservative analogy likens the virtual patron to the telephone patron and implies a fairly straightforward set of service guidelines (see, e.g., Goodman, 2002). What librarian has not used a database to verify a citation or a fact for a telephone patron? And who has ever doubted that such use is acceptable? Because there is no option of going farther and presenting the material directly – because there is no slippery slope to tumble down – telephone policies seem clear in a way that virtual reference policies often do not.

A final model for the virtual patron is at once the most difficult and the most realistic, for it argues that the virtual patron is *sui generis* – that he is in a category by himself. From a practical point of view it may also be helpful to remember that virtual patrons in fact often represent several constituencies simultaneously. Some are our affiliates; some are residents of our state, who are thus privy to state database resources; and some are affiliates of other universities or regions, who can be directed to resources available elsewhere. If the virtual patron is indeed a new species, then librarians must perhaps forge new policies rather than simply adopting analogous ones.

### **Defining "Database Use"**

To say that database use is prohibited in live virtual reference exchanges with non-affiliated patrons would seem to be a fairly simple and straightforward statement of policy, but any librarian who has attempted live virtual reference knows that there are in fact many different levels of database use. At one extreme is "co-browsing" or "page pushing," by which the patron is effectively granted full entry into a

database. As a more moderate measure the librarian might email or copy and paste a single full-text article, or send a list of citations, but no full text. Finally, at the most conservative extreme, the librarian might consult a database to inform herself, and then merely paraphrase the information to the patron. The first example would be consistent with the view of the virtual patron as virtual walk-in, with full access to the digital resources of the library. The last example suggests an analogy to the telephone patron, who encounters the resources of the library only through the mediating presence of the librarian. So exactly what type of "database use" do the licensing agreements prohibit?

While Bernie Sloan stated that the consensus in conference discussions favored the walk-in model, the policies reported in the responses to his query suggest a definition more analogous to that of the telephone patron. Susan D. Barb (2002) of 24/7 Reference described a policy common to virtual reference consortia in which the librarian uses only the databases available to the patron. This clearly legal policy is most easily applied in a consortium in which all patrons have access to some databases, though it presents some challenges to the librarian who must determine what databases are available to the patron and navigate numerous databases other than her own. A simpler and equally acceptable solution for a consortium is to identify a set of core databases shared by all members and then limit use to these resources. 24/7 also reported the example of a service subscribing to a database, OCLC FirstSearch in this case, for the exclusive use of virtual reference patrons. In another response to the same DIG\_REF query, Larry Schankman (2002) of the Keystone Library Network's Virtual Information Desk in Pennsylvania described a less conservative, but also reasonable,

policy of sending no full text, but instead providing citations and abstracts to non-affiliated patrons. This policy reflects the tension between copyright issues (lists cannot be copyrighted) and licensing agreements (lists can be licensed) that is at the heart of the legal questions.<sup>2</sup>

The DIG\_REF librarians, perhaps representing the good intentions of service providers, seemed inclined to stretch the definitions, to provide as much service as possible to the non-affiliates. In contrast, the librarians who have discussed the topic on Liblicense, a list devoted to electronic resource licensing issues, have tended to take a more conservative stance, perhaps typical of those entrusted with protecting legal agreements. One Liblicense respondent noted that answering a question from a database is acceptable, although page pushing or co-browsing probably is not (Connell, 2002), while another noted that "the provision of assistance is one thing, and the provision of documents is another" (Goodman, 2002). Interestingly, but not surprisingly, both of these positions were endorsed by Bob Bolick (2002) of McGraw-Hill, a self-described "e-resource provider," in a rare reply from a vendor's perspective. Faced with such contradictory positions, many practitioners have clearly found the conservative paths to be the most prudent. For example, a policy from the University of Illinois, dating from 2001, prohibits any database use with non-affiliated patrons: "Bibliographic citation verification; database searches; requests for online articles, etc. These questions fall outside the scope of service to non-affiliated users and licensing restrictions prevent sending information from proprietary databases" (cited in Ronan, 2003, p. 134).

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<sup>2</sup> For discussions of the relationship between copyright and licensing agreements, see Davis (1997) and Button (1999).

In the evolving story of virtual reference, some of the most thoughtful observations have repeatedly come from those actually involved in the service, as evidenced by the electronic message list comments cited above. These precise, even if sometimes contradictory, suggestions contrast sharply with the more equivocal statements found in some policy manuals, “how-to” guides, and theoretical discussions of the topic. The “Library of Congress QuestionPoint User Guidelines,” a detailed 44-page document so helpful on many issues, states only “Issue pending” under the heading “Database Licensing Agreements” (Library of Congress, 2003, p. 7). One author, addressing the issue of “fair digital use” warns, “Libraries planning to offer electronic reference services can expect to face a complex and unclear legal position for the next decade or more” (Butler, 2003, pp. 91, 100). Another start-up manual identifies the questions, but likewise concludes that answers are in short supply:

[Do] copyright law and your current database licenses permit you to push pages of a proprietary database to your patrons? What about patrons who don't attend your institution or are not in your state? What about escorting them to a database and leaving them there? Will you ever be able to tell for sure who is really in your state or not? Guess what: no one really knows the answer to these questions. Approaches are still evolving. (Meola & Stormont, 2002)

Exasperating though such fence-sitting statements can be, they are accurate reflections of the legal reality, and their authors are wise to acknowledge the

ambiguities and to resist the temptation to provide easy answers. The body of literature on digital copyright, intellectual property, and licensing – generated by lawyers, librarians, and the digital information industry alike – is enormous, yet answers will not clearly emerge until Congress and the courts have had time to define the rules of the Information Age.<sup>3</sup>

### Learning from Experience

Thus warned, but not enlightened, what is the practicing librarian to do? In the absence of reliable guidelines, it seemed worthwhile after a year of service at the University of Alabama to look at the evidence in the question logs themselves. What kinds of questions were the different constituencies asking? What resources were required to answer these questions? How often did the virtual librarian face the database dilemma – a question from a non-affiliate that could be answered only from a proprietary database?

The first year of the University of Alabama's QuestionPoint program, which began on September 9, 2002, taught many lessons. We learned that the virtual librarian needs good friends among the technical support staff; that an improved name can nearly double the business; that librarians work best when left to their own resources, free to use their own strengths and styles. With a full transcript of every chat session, we had at our disposal a body of evidence that could test the

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<sup>3</sup> For a useful overview of these issues and a history of the relevant legislation and legal cases, in the context of virtual reference, see Chou and Zhou's (2003) “Examining the Impact of DMCA and UCITA on Online Reference Service.” For a discussion of related legal issues, see also Minow's (2003) *The Library's Legal Answer Book*.

assumptions of all who had speculated on the nature of the database problem.

The first year of QuestionPoint chat yielded 158 viable live virtual reference exchanges. Training questions, a handful of inappropriate questions, and questions fatally interrupted by technical difficulties were excluded to yield this number. The pool was smaller than expected, in part because of technical problems that plagued the service periodically throughout the year. With these issues now resolved, the service has averaged 33 questions per month in the first five months of the second year.

#### *Who are our patrons?*

The questions were first analyzed to determine the percentage of affiliates and non-affiliates represented in the question pool. The QuestionPoint chat form, unlike the email form, provides no easy mechanism for tracking affiliation. This information could, however, be determined in most cases from the return email address or from evidence within the chat transcripts. Of the 158 usable questions received during the first year, 67% came from UA affiliates, 27% came from non-affiliates, and 6% came from unknown sources.<sup>4</sup>

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<sup>4</sup> The information used for this study was culled from a larger set of data, gathered to evaluate the first year of the library's live virtual reference service. The questions were coded to provide other information not relevant to this study, including the length of the reference exchange; number of referrals to University of Alabama subject specialists or to the Alabama Virtual Library; the UA orientation of a question (i.e., whether it could have been answered successfully by a librarian at a member institution in a consortium); the incidence of questions from distance education and international students, two constituencies initially expected to be heavy users of the service; and the quality of the answer.

#### *What types of questions are they asking?*

Some kinds of questions are more likely to require database use than others. For insight into the database issue, it was necessary to determine the types of questions the two groups were asking. Questions from the two groups were therefore classified into one or more of five categories: Reference; Catalog/Database Access; Library Services; Technical Issues; or Other. While university affiliates tended to ask a wide variety of questions, many related to library services or technical matters, the community users asked a high percentage of substantive reference questions, many requiring considerable effort on the librarian's part. Because the affiliates were asking so many questions about the logistics of using library resources, particularly databases, the *percentage* of true reference questions was lower for this group than for the non-affiliates. Of the affiliates' questions, 46% were classified as reference questions, while of the non-affiliates' questions, 60% were judged to be true reference questions. With the non-affiliates needs so clearly reference oriented, would the demand for database use among these patrons be unacceptably high?

#### *What resources do they need?*

To judge the relative need for database use among the two user groups, questions were analyzed according to the sources used or recommended to answer them. Categories included Databases, Catalog, Internet, Print/Manuscript, and Other. In spite of the higher percentage of true reference questions among the non-affiliates, their need for the databases was considerably lower than that of the affiliates. Only 16% of the questions posed by non-affiliates required databases as opposed to 36% of questions from affiliates. If one looks only at the reference questions asked by

each group, the difference is even more striking: 60% of UA reference questions and 19% of non-UA reference questions required the use of databases.

## Conclusions

The results of this brief glimpse into the first year's question logs are encouraging. The questions of the two user groups tended to be largely self-regulating in terms of the sources required to answer them, with each group generally asking questions that could be answered from the resources available to them. The transcripts confirmed this quantitative conclusion on a qualitative level as well. The questions from the non-affiliates were generally more factual and less open-ended than those of the affiliates, whose questions tended to be research oriented, with more emphasis on compiling a bibliography than on locating a particular piece of information. University students, repeating the language of their class assignments, tended to phrase their questions in a way that more or less demanded database use: "I need three scholarly articles that discuss...." Community users, however, tended to focus more on the quality of the information than on the source: "I need some good information about...." This more accommodating phrasing usually allowed the librarian to consult high-quality Internet sites, sources that are often explicitly prohibited for class assignments.

But what about the small number of non-affiliate questions that seemingly did require the use of databases? The question logs reveal that even these questions could in most cases be adequately answered through legal means. In several cases, the librarian determined in the course of the reference interview that the patrons were students at other universities who

could be directed to their own libraries' resources. These students apparently wanted access to our virtual librarians, rather than to our virtual resources – a lesson, perhaps, for librarians who question the value of live virtual reference assistance in the university setting. Several other patrons were directed to the resources of the Alabama Virtual Library (AVL), a set of databases available to all citizens of the state. Our virtual reference exchanges have, in fact, provided some opportunities to educate Alabama residents about the wealth of electronic resources available to them. In the end, of 43 questions from non-affiliates, only one presented a legitimate question that truly could not be answered because of database restrictions. In this case, a student at a community college in another state was hoping to gain access to databases not available through her college's small library or her state's resources.

The transcripts of the exchanges with the non-affiliated users provide some lessons for the virtual librarian. In one case, after the librarian had asked whether the patron was affiliated, the patron responded that she was not and promptly disappeared, apparently convinced that she was not welcome. We have learned that it is usually most effective not to ask directly whether a patron is affiliated, but rather to offer several options of service: "If you are a UA student . . . ; if not . . . ." With this sort of prompt, patrons usually state their affiliation and clarify the direction of the exchange. The direct question is clearly threatening in a way that the statement of options is not, and virtual librarians must be sensitive to language that is welcoming rather than forbidding. While most of our virtual reference transactions were judged to be successful, some would have proceeded more gracefully if the librarian could have known the affiliation

of the patron at the beginning of the session. The ability to customize the QuestionPoint chat form to acquire this information would be a vast improvement in the program.

In terms of database policy with non-affiliated users, the University of Alabama has chosen a cautious path. Our policy states that a librarian may consult a database while answering a non-affiliated patron's question, but that she may not send the database page to the patron, copy and paste any information (citations or full text) from the database, or email content from the database to the patron. This policy provides clarity for the librarian and the patron alike, and is clearly in compliance with all licensing agreements.

Early in the planning stages of the University of Alabama's QuestionPoint chat service, some librarians expressed reservations about opening the service to the public because of the database issue. The results of this investigation suggest that those concerns were

largely unfounded and that affiliates and non-affiliates alike have been served thoughtfully and well, with appropriate resources and equal consideration. Patrons have tended to ask questions that could be answered from the sources available to them. University students and faculty generally ask university-library questions, while other patrons generally ask public-library questions. Like many state-funded university libraries, the University of Alabama Libraries have long acknowledged two complementary missions, and we continue to open our doors – virtual and otherwise – to all. As live virtual reference services become more common, our virtual users will likely be written into licensing agreements, and the ambiguities of database use will disappear. Meanwhile, our experiences at the University of Alabama indicate that the demand for database access by non-affiliated patrons is surprisingly low, and that the benefits of providing service to all far outweigh any difficulties encountered in applying licensing restrictions.

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