

GUEST EDITORIAL

The American Institute of Physics (AIP) and the American Physical Society (APS) have historically been committed to

the free and open discussion of ideas. That commitment has been upheld by courts in Germany, Switzerland, the US, and finally in France following 12 years of challenges to it by Gordon and Breach Publishers (G&B). G&B's recent withdrawal of its pending appeal in France brings the challenges to an end. The AIP and APS passionately believe that the proper place to raise issues that involve substantive disagreements is in public forums, not in the courts. Although the legal battles meant tremendous costs—in both human and financial terms—we strongly feel we did the right thing for the right reasons. The societies can rightfully be proud of this victory.

The source of the conflict involved studies of journal costs to libraries done by the late Heinz Barschall of the University of Wisconsin–Madison. His findings were published in articles in both *PHYSICS TODAY* (PT, published by AIP) and the *Bulletin of the American Physical Society* (BAPS, published by APS). Barschall received awards for his research from librarians but, unfortunately, did not live to see his final vindication in the courts. It is also unfortunate that threats of costly lawsuits have had a chilling effect on scholarly discourse related to journal pricing.

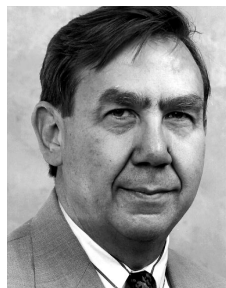
In a December 1986 article in PT, Barschall compared the unit prices—essentially the prices paid by US libraries per 1000 characters or equivalent—of a small group of physics journals. In two 1988 articles, one in the July issue of PT and the other (written with John Arrington) in the July/August 1988 issue of BAPS, Barschall expanded his study to include the relative cost-effectiveness of about 200 physics journals. His measure of cost-effectiveness was the ratio of journal price per 1000 characters to the published *Science Citation Index* impact factor.

G&B, which did not fare well in the comparisons, charged AIP, APS, and Barschall with false and misleading advertising, unfair competition, and related offenses. It also challenged Barschall's integrity and motives in conducting his research. Despite offers by AIP and APS to provide a public forum in their publications for

Defending Freedom of Speech: What Have We Accomplished?



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both the societies and G&B to air their views, G&B chose instead to institute court cases against AIP and APS in Germany (1989), Switzerland (1989), France (1989), and the US (1993). Barschall was a codefendant in several of these cases. In every case, final decisions have now been rendered, upholding the accuracy and truthfulness of the articles. The US court also affirmed the freedom-of-speech rights of PT and BAPS to publish such reports. In addition, the US court case documented an international pattern of threatened lawsuits against those who compared G&B prices.

So what has been accomplished by the vigorous and successful defense of our right to publish reports about the pricing of physics journals? Clearly, we have defended our freedom of speech for articles that compare prices and are published and distributed in the US. We have also learned that, in foreign courts, defending the publication of such articles has even higher burdens. Foreign laws differ from US laws, and foreign courts often have a lower threshold for interpreting published articles as advertising, leaving those articles unprotected by freedom of the press per se. Advertising itself has standards of truthfulness, objectivity, and data relevance that may vary from country to country. In all the cases, we were found to have met the very highest of these standards, but it was a costly (millions of dollars) and complicated legal exercise. In a related instance, the American Mathematical Society (AMS) dropped its defense of a G&B suit in Germany because it felt that it could not afford the cost of defending its survey of journal pricing. Legal costs have only increased the burden to AIP and APS while the

societies continue pricing their journals as low as possible for the widest dissemination of information.

Such is the irony when the courts are the venue chosen to settle differences of opinion about reported data.

As the AMS and other documented situations illustrate, G&B was successful, for a while, in squelching comments on its pricing. So, does our successful defense mean that pricing data on journals for libraries and publishers can now be provided, and discourse conducted in the same venues used for other policy debates without fear of lawsuits? Let us hope so.

However, much has happened in journal publishing over the past 12 years. One event was the sale in February of the G&B physics journals to another publisher. But the main development has been the appearance and use of the World Wide Web as a vehicle for journal publication and public exchanges of opinion. The Web has led to a variety of complicated pricing options; it is likely that a latter-day Barschall would find it much more difficult to gather and organize pricing data. We do not know whether pricing comparisons will become moot or will be more subject to legal challenges. We shall see.

Both AIP and APS will continue to offer forums for discussion of issues related to scholarly publishing. We are proud of our role in defending the right of Barschall to publish his findings. The credit for victory goes to several members of the leadership of both societies, and to the societies themselves, which gave unstintingly of their time and money to pursue challenges in courts throughout Europe and the US. During this struggle, we have received not only consistent moral support from members of the academic library community, but also dedicated and knowledgeable legal support. We thank those who supported Barschall and our societies in upholding his integrity and competence, his right to have his say, and our right to publish his data.

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