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Issues in Vendor/Library Relations — Law Librarians Take a Positive Step

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In the 1970’s the Federal Trade Commission (FTC) issued guidelines for a number of industries to ensure that consumers were protected from the most serious improper business practices. Among the businesses covered were nurseries, advertising, and sales of used and reconditioned automobile parts. Law librarians, unlike those in every other walk of library life, were fortunate enough to enjoy the protection of a federally mandated set of best practices, since the legal publishing industry was one of those overseen by the FTC.

Guides for the law book industry addressed the sale of legal reference materials and described marketing, supplementation and billing practices. In 2000, however, the FTC rescinded all of its industry guides, including those for legal publishing. Prior to the rescission, the agency received a significant amount of commentary from the American Association of Law Libraries (AALL) and its members. The FTC followed through on the decision to rescind, but in doing so invited “[A]ssociations continued on page 87

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such as AALL . . . [to] adopt guides of their own to educate sellers and purchasers about the information purchasers of legal reference materials need to make purchasing decisions.” The Commission further noted that eliminating the guides might provide the incentive for these Associations to develop their own guide that addresses their members’ most important concerns.

Last November, the AALL Guide to Business Practices for Legal Publishers, approved by the AALL Executive Board, was released. The Guide is designed to provide a comprehensive overview of the business practices in the legal publishing industry. It includes guidelines for publishers on topics such as marketing, sales, and distribution.

The AALL for many years has had a Committee on Relations with Information Vendors (CRIV). Like other such committees, it tries to encourage good practices, as well as to mediate individual librarian complaints. In recent years, CRIV has been the mechanism for the publication to resolve customers’ concerns. The new Guide is an extension of these activities.

Publishers’ Views

The special committee that drafted the AALL Fair Business Practices Guide engaged in a dialogue with several of the major legal publishers and received written comments from many as well. Those comments were important considerations in drafting the Final Guide. Frank Houdek, Law Library Director and Professor of Law, Southern Illinois University School of Law, chaired that committee and speaks positively about the value contributed by the publishers who reviewed and commented on the early drafts. The comments we received from publishers provided not only important background information for the special committee but also served as an important “reality check” during the drafting process. We wanted to produce a guide that addressed the areas of greatest concern to librarians but avoided provisions that interfered with typical business models. This would have been very difficult without the feedback we received from the publishers.

In some cases, publisher comments related to the business practices of competing publishers, in particular those who appear in the AALL Guide. We wanted to ensure that the Guide reflects the industry standards and practices, and that it is an accurate and comprehensive resource for librarians and publishers alike.

Next Steps

AALL has a Task Force working this year and next to oversee the Guide. Members of the Task Force are: Kay M. Todd (Chair), Sr. Legal Publisher; Paul Hastings, Janofsky & Walker LLP; Michael Beard, Senior Associate Professor, Indiana University School of Law; Kamala Hedges, Director, Library Relations, The Bureau of National Affairs, Inc.; Linda Kawaguchi McLane, Head of Acquisitions, University of California School of Law Library; Judy Lauer, Sr. Law Librarian, New York State Supreme Court Library; and James Mumm, Acquisitions/Serials Librarian, Marquette University Law Library.

The charge to the Task Force is to promote the Guide and encourage its adoption and use by both librarians and legal publishers. The Task Force is currently working on distributing copies of the AALL Guide to legal publishers and encouraging them to use it, publicizing the Guide in publications that have an audience of legal professionals, and alerting other librarians to its availability. According to Janis L. Johnston, President of AALL and Director of the University of Illinois Law Library, “The Guide has applicability outside of the law book publishing industry. Many librarians in other types of legal disciplines encounter similar issues related to billing, and supplementation and advertising, and many non-law librarians also maintain legal collections within their academic or public library.” Copies of the AALL Guide are available from AALL Headquarters by contacting gfp@aall.org. In addition, the Guide is available in an online version on the AALL website, from the Products & Publications section, at www.aallnet.org. You may contact the AALL Fair Business Practices Implementation Task Force by email to kaytod@paulhastings.com.

Common Issues

The AALL Guide’s five major principles are:

1. Truthful and Accurate Communications;
2. Disclosure;
3. Fair Dealing;
4. Customer Satisfaction;
5. Product Quality.

The depth of the Guide, however, is in the sub-principles. For instance, within Principle 1, Truthful and Accurate Communications, Sub-principle 2 indicates that “Advertising and marketing materials should clearly indicate that they represent only an offer or encouragement to purchase.”

A closer look at several of the principles shows that they address some of the classic issues that collection development and acquisitions librarians face. Principle 2 asserts that publishers should provide full disclosure about their products, services, prices, and transactions. There is a sub-paragraph that describes the information provided by publishers, including full title, author, editor, ISBN or ISSN numbers, and the current copyright date. The same sub-principle would require publishers to disclose all relevant information about the product, including any additional charges, such as shipping or handling.

Furthermore, Principle 3, Fair Dealing, requests that publishers secure the customer’s consent prior to shipping material unless there is a standing order or subscription to which the customer has previously consented. This principle also requests that renewal notices be mailed to customers so that they relate to the date of the subscription and include the current expiration date. This sub-principle is supported by a “practice to avoid” that describes a renewal notice sent six months prior to the expiration of the subscription. Principle 4, Customer Satisfaction, addresses the need for customers to be able to contact customer service through a variety of media. It further requests that customer service employees be fully informed, in order to respond to customers’ questions. Principle 5, Product Quality, addresses the issues related to reasonable use, and a product’s ability to withstand the test of time. That principle incorporates the ANSI “American National Standard for the Permanence of Paper for Publications and Documents in Libraries and Archives.” Elsewhere the Guide incorporates the principles for Licensing, Electronic Resources, which was jointly adopted by AALL, the American Library Association, Association of Research Libraries, Medical Library Association, Special Libraries Association, and the Association of Academic Health Sciences Libraries.

There is clearly a body of shared experience in dealing with publishers, leading to shared issues of communication, purchasing, and product quality. The AALL Guide has much to offer non-law libraries in general, accepted standards of practice. This year, the AALL Task Force will be working to secure explicit adoption of these principles by legal publishers. The Task Force is hopeful that common customer service issues will diminish, as both librarians and publishers act according to the AALL Fair Business Practices Guide.