

American Association of Law Libraries
Guide to Fair Business Practices for Legal Publishers

Approved by the Executive Board November 2002; Second Edition approved July 2006.

A Brief History (To be revised)

The AALL Executive Board approved the *AALL Guide to Fair Business Practices for Legal Publishers* in November 2002. While not necessarily intended to replace the *Federal Trade Commission's Guides for the Law Book Industry*, for the first time since the commission rescinded its guides in 2000, law librarians and publishers now have a document addressing many of the key issues that mark the relationship between the two groups.

AALL's decision to develop its own guide was in part a response to a statement in the FTC's rescission notice: "[A]ssociations such as AALL...can adopt guides of their own to educate sellers and purchasers about the information purchasers of legal reference materials need to make purchasing decisions. Indeed, eliminating the guides may provide the incentive for these associations to develop their own guides that address their members' most important concerns."

This goal was adopted by AALL in outcome 4B of the 2000-05 Strategic Plan ("Legal publishers follow fair business practices"). AALL appointed a Special Committee on Fair Business Practices comprised of Chair Frank Houdek, Kathy Carlson, Chris Graesser, Kay Todd, and Michelle Wu. Over a period of two years, the committee engaged in a rigorous process that included soliciting and receiving comments from librarians in all types of law libraries as well as representatives from various legal publishers. Several iterations of the guide were widely distributed and a "town meeting" was conducted at the 2002 Annual Meeting in Orlando, Fla., before a final version was submitted to the board.

The AALL guide describes standards for the business practices of publishers that most directly affect law librarians and covers the full range of their interactions, from advertising and solicitation to purchases and customer support. It consists of five general principles, each of which is accompanied by subprinciples and examples. It does not explicitly require any methods of operation because it is not intended to interfere with particular business models. As indicated in the introduction, the guide "is designed to allow legal publishers to take advantage of evolving technology and to foster innovation while adhering to principled business practices that will ensure fair and appropriate treatment for customers."

The special committee was under no illusion that the simple promulgation of an AALL guide would solve all existing problems associated with the business practices of legal publishers and prevent future ones from arising. However, it did believe that a good faith effort on the part of the legal publishing community to implement the provisions of the AALL guide, coupled with the use of these principles by librarians as the level at which their expectations of publishers were set, will go a long way toward reducing tensions and solving problems.

During 2005-06, the Fair Business Practices Implementation Task Force looked for ways to make the Guide more helpful to both librarians and publishers. To this end the task force added several new "Practices to Follow/Practices to Avoid." The new version of the Guide also integrates links to the AALL Principles for Licensing Electronic Resources. The task force, chaired by Kay Todd, was comprised of Rita Dermody, Kamla King Hedges, and Richard Vaughan. The revisions were approved by the AALL Executive board in July 2006.

Introduction (To be revised)

1. The American Association of Law Libraries Guide to Fair Business Practices for Legal Publishers ("AALL Guide") is premised on the belief that good customer service and positive customer relations benefit legal publishers as well as customers. Equally fundamental is the understanding that the relationship between publishers and customers must be built on mutual respect and trust.
2. The AALL Guide provides guidelines for legal publishers doing business with librarians and other consumers of legal information. It describes standards for the business practices of publishers that most directly affect librarians and other legal information consumers, and covers the full range of their interactions, from advertising and solicitation to purchases and customer support. The best practices identified by the AALL Guide are designed to facilitate effective and productive relationships.
3. By following the provisions of the AALL Guide, legal publishers can significantly contribute to effective self-regulation in the public interest and help establish the AALL Guide as the accepted standard in the industry. AALL urges legal publishers to comply with the AALL Guide and to implement the requisite internal procedures and infrastructure to support compliance.
4. The AALL Guide offers practical, performance-based guidelines, along with examples of practices either to follow or to avoid that are intended to help explain these guidelines, but it does not explicitly require any methods of operation because it is not intended to interfere with particular business models. While the AALL Guide establishes goals, it does not specify how they should be reached, leaving those individual decisions to the legal publisher that knows its business model best. As such, the AALL Guide is designed to allow legal publishers to take advantage of evolving technology and to foster innovation while adhering to principled business practices that will ensure fair and appropriate treatment for customers.
5. The AALL Guide uses the term "should" in recognition that this is a voluntary code. However, all provisions are recommended for implementation by the legal publishing community. Law librarians and consumers of legal information are encouraged to set their expectations of legal publishers at the level of the AALL Guide and to reference these principles and standards in their interactions with publishers.
6. The legal information and publishing environment is rapidly evolving and AALL recognizes that the AALL Guide may need to be modified to keep pace with developing technology, new business models and practices, and the needs of customers. AALL is committed to regularly reviewing the AALL Guide and updating it as needed.

Definitions

Unless the context otherwise requires, words or phrases defined in this section have the meanings stated.

beta testing

[insert definition]

communication

Any transmission or exchange of written, oral, or electronic information between publisher's representatives and customers.

customer

Any individual or institution, including an employee or representative of a library, who has business dealings with a publisher.

electronic product

Information that is sold or delivered in an electronic format, or a product that relates to the management of information in an electronic format.

fair dealing

The conduct of business with full disclosure. (*BLACK'S LAW DICTIONARY 633 (8th ed. 2004)*).

material information

Information that would be important in making a decision about a transaction.

product

A tangible item that is distributed commercially for use or consumption.

publisher

Any corporation, partnership, government entity, or person that is in the business of providing legal information for sale. This includes those who act as agents or representatives of a publisher. Whenever the term "publisher" is used it is intended to include publishers of print and electronic products.

service

In relation to electronic resources, non-tangible sources of information distributed commercially for use or consumption.

In relation to customers, assistance provided by a publisher to enable a customer to receive the best possible value for the product by minimizing the amount of time the customer needs to spend in answering any questions about or problems concerning the product.

standing order

An authorization to make regular or periodic shipments of new issues, new editions, or supplementary content for a specified product.

supplementation

Material or information provided to update the information content of an existing product.

transaction

An action involving two parties; usually an exchange or transfer of goods, services, or funds.

Principles for Fair Business Practices of Legal Publishers

The AALL Guide is based on five major principles. These principles should be considered together with their sub-principles and supporting comments and examples.

Principle 1: Truthful and Accurate Communication.

Publishers should engage in truthful and accurate communication with their customers or potential customers.

Principle 2: Disclosure.

Publishers should provide full disclosure about their products, services, prices, and transactions in order to enable library professionals to make informed acquisitions decisions.

Principle 3: Fair Dealing.

Publishers should engage in fair dealings with their customers.

Principle 4: Customer Satisfaction.

Publishers should seek to ensure customer satisfaction by honoring representations, answering questions, and resolving complaints and disputes in a timely and responsive manner.

Principle 5: Product Quality.

Publishers should create products that are capable of withstanding reasonable use by customers.

Principle 1: Truthful and Accurate Communication. Publishers of print and electronic products should engage in truthful and accurate communication with their customers or potential customers.

1.1 Publishers should engage in truthful advertising of their products and services regardless of format. Their advertising and marketing should not make deceptive or misleading representations or fail to include material facts.

1.1(a) Publishers should be able to substantiate any express or reasonably implied factual claims made in their advertising or marketing. Reasonable substantiation should exist prior to disseminating any claim.

1.1(a) PRACTICE TO AVOID: Beta testing on an electronic product is not completed prior to an assertion in an advertisement that the product has undergone successful consumer testing and is ready for general distribution.

1.1(b) Publishers should not mislead customers by creating a false impression of sponsorship, endorsement, popularity, trustworthiness, or product quality.

1.1(b) PRACTICE TO FOLLOW: A statement extolling the quality of a product, used in an advertisement, should indicate if a relationship

exists between the source of the statement and the publisher of the product.

1.2 All methods of communication that market products should accurately describe the nature and content of the products. Advertising and marketing materials should clearly indicate that they represent only an offer or encouragement to purchase.

1.2 PRACTICE TO AVOID 1: Material information in an advertisement is presented in such a way as to make it difficult to distinguish between editorial content and advertising.

1.2 PRACTICE TO AVOID 2: Promotional material is presented in a form sufficiently resembling an invoice as to make it likely that a customer will be confused or misled.

1.2(a) Advertising and marketing material for a product should clearly indicate if the material listed or linked to from an online advertisement is for different or expanded content from the original product so as not to materially mislead the customer.

1.2(a) PRACTICE TO AVOID: A publisher's promotional literature for a specific product, sold separately, links to a description of "bundled" services offered at additional cost.

1.2(b) On-line marketing may link to websites where they add to or supplement information about goods or services but should not:

- i. contradict or substantially change the meaning of any material statement or claim
- ii. create the false impression of affiliation
- iii. create the false impression that the content, merchandise, or service of another entity or business is its own

Principle 2: Disclosure. Publishers should provide full disclosure about their products, services, retail prices, and transactions in order to enable customers to make informed purchasing decisions.

2.1 All information about products, services, prices, and transactions provided by publishers to customers should be clear, accurate, and easy to locate.

2.1 PRACTICE TO AVOID: A publisher's invoice uses such an abbreviated title for the item being billed that it is difficult for customers to identify the item.

2.1 PRACTICE TO FOLLOW 1: Pricing information on a publisher's website is prominent and easy to locate.

2.1 PRACTICE TO FOLLOW 2: A publisher makes readily available a description of standard discounts and variable pricing options for all products and services.

2.1 PRACTICE TO FOLLOW 3: Email pricing inquiries receive a prompt response.

2.2 ESSENTIAL PRODUCT INFORMATION: Prior to confirming a purchase, publishers should provide in writing all important bibliographic information, subscription terms and pricing information necessary for a customer to make an informed decision about products and services, including but not limited to:

2.2(a) Full title, author(s) or editor(s), ISBN or ISSN, and brand/publisher

2.2(b) Copyright date of the print or electronic book and edition, prominently displayed in all communications, on all advertisements including website, and on supplementary material

2.2(b) PRACTICE TO AVOID: An advertisement for a previously published product that has not been updated does not disclose the copyright date, thereby implying that the product is either new or newly revised.

2.2(c) For electronic products, the browser or other technical requirements for receiving or accessing the product and any known system incompatibilities, should be prominently displayed in all communications

2.2(d) Notice as to whether the product is a revision, recompilation, abridgement, reprint, or is otherwise derived from another print or electronic source

2.2(d) PRACTICE TO AVOID: A product that is created solely by extracting material from existing publications is billed as a new product.

2.2(d) PRACTICE TO FOLLOW: A publisher clearly identifies the original source of a product that is a revision, recompilation, or condensation of an existing publication.

2.2(e) Expected publication date of next edition if known to be within the next six months.

2.2(f) Complete physical description, including whether publication is a looseleaf or bound volume, contains a CD, or has a companion Web site

2.2(g) Cost, including (1) itemization of all components, (2) estimate of any shipping and handling charges, (3) anticipated supplementation costs, (4) applicable discounts, and (5) any other advantageous purchasing options

2.2(g) PRACTICE TO FOLLOW 1: The price supplied prior to purchase contains all elements for which the customer will be responsible, such as shipping and handling costs.

2.2(h) If offered in multiple formats, a full description of each available format, including any differences in scope, price breakdown, frequency of update or supplementation, and license restrictions

2.2(h) PRACTICE TO FOLLOW: Review the Principles for Licensing Electronic Resources. These Principles provide guidance to library staff in working with others in the institution and with licensors to create agreements that respect the rights and obligations of both

parties.

<http://www.aallnet.org/committee/reports/LicensingPrinciplesElecResources.pdf>

- 2.2(i) Information on supplementation should include :
- i. Expected extent, content, and format of supplementation
 - ii. Expected frequency of supplementation or schedule of issues
 - iii. Whether cost of supplementation is included in the flat rate subscription or separately charged by shipment or some other arrangement
 - iv. When possible, historic data and projected annual % increase in the cost of supplementation for the product

2.3 As part of an agreement to purchase, publishers should provide in writing, in plain language, all the terms of a particular transaction, including but not limited to:

- 2.3(a) Price or license fee to be charged with detailed line items
- 2.3(b) Any offered terms or limitations, including special offers
- 2.3(c) Expected tax, shipping and handling charges
- 2.3(d) Any known related material that will be shipped automatically as part of a subscription or standing order and that will incur an additional cost
- 2.3(e) Billing information and payment terms
- 2.3(f) Return, refund and cancellation policies

2.3 PRACTICE TO FOLLOW: Publisher notifies customer at least 30 days in advance in writing whenever there are changes in format, content, pricing, or other terms or policies.

2.4 ADVERTISING AND MARKETING MATERIAL. The content of information that appears in both print and non print advertising and marketing sources should be consistent.

2.4 PRACTICE TO AVOID: A print advertisement lists a product's price, but an electronic advertisement or email solicitation for the same product does not.

Principle 3: Fair Dealing. Publishers should engage in fair dealings with their customers.

3.1 Customer consent. Publishers should obtain the customer's consent prior to making a shipment or initiating a transaction, unless such shipment is part of a standing order or subscription to which the customer has previously consented.

3.1 PRACTICE TO AVOID 1: Without prior customer consent, a publisher mass mails a new product to customers who have previously purchased an existing product.

3.1 PRACTICE TO AVOID 2: Without prior customer consent, a publisher ships a free unsolicited newsletter to a customer and then later sends an invoice for the title.

3.1(a) Where the content of a new product or supplement that is published as part of an existing subscription or standing order bears no direct relationship to the content of the standing order or represents a substantial expansion of the topic or purpose of the original subscription or product, the publisher should seek customer consent prior to shipment.

3.1(a) PRACTICE TO AVOID: Without prior customer consent, the publisher of a subscription service ships to subscribers of the service a pamphlet that includes content that has not previously been supplied as part of the subscription, where that content is not specific or closely related to the topic of the service, and charges customers for the pamphlet.

3.1(b) Where a new product or supplement is published as an addition to more than one existing title or subscription, the publisher should seek customer consent prior to shipment.

3.1(b) PRACTICE TO FOLLOW: When planning to ship identical pamphlets as part of several different subscription services, the publisher gives customers prior notice and the option to receive more or fewer copies of the pamphlet according to the needs of the customer.

3.1(c) Where a new product or supplement published as part of an existing title is substantially redundant of material already contained in that title, the publisher should seek customer consent prior to shipment.

3.1(c) PRACTICE TO AVOID: Without prior customer consent, a publisher ships a recompilation of session laws to customers who have already received the material in the same publisher's advance legislative service to which they subscribe, where recom compilations have not previously occurred or been shipped as part of that subscription.

3.1(d) Publishers should seek customer consent prior to shipping materials that fundamentally alter, enhance, or augment a product or subscription. Unsolicited merchandise may be disposed of without permission, without an attempt to return, and without payment, pursuant to federal statute (39 U.S.C. § 3009). In all cases, publishers should offer a simple procedure for returning products and canceling subscriptions.

3.1(d) PRACTICE TO AVOID: A publisher requires that a customer pay postage when returning an unsolicited product.

3.1(e) Subscriptions to legal information products are traditionally "until forbid" or standing orders. However, where a substantial change in the nature, format, or scope of a product results in a significant cost increase, publishers should give customers advance notice before shipping the product. Publishers should provide reasonable advance notice of new editions or recom compilations that will incur a single large upkeep cost.

3.2 Fair negotiations. Publishers should engage in open and fair negotiations with customers regarding licensing agreements and other contracts.

3.2(a) Publishers should not bind their customers to a non-disclose clause as a non-negotiable requirement of doing business.

3.2(b) Publishers should always provide an opportunity for their customers to negotiate contract terms. "Shrink wrap," "click-on," and other attempts to create agreements that do not provide customers with a fair opportunity to negotiate should not be required.

3.2(c) Publishers should adhere to the Principles for Licensing Electronic Resources, revised and adopted by the American Association of Law Libraries in 2004.
<http://www.aallnet.org/committee/reports/LicensingPrinciplesElecResources.pdf>

[update cite and approval information following adoption of revision to Principles for Licensing]

3.2(c) PRACTICE TO FOLLOW: Review the Principles for Licensing Electronic Resources.

3.3 Substantive supplementation. Product supplementation should be issued only when a significant change in the law has taken place, or when substantial additional content is provided.

3.3(a) Customers should be provided with a complete and detailed description of the supplement's contents.

3.3(b) Customers should be fully advised of the term of a subscription and what is included in it at the time of purchase. This advisement should describe the expected supplementation, including whether at the publisher's discretion no supplementation may be provided over the term of the subscription.

3.3(b) PRACTICE TO AVOID: Publisher provides a subscription invoice that does not clearly indicate to the customer what is included in the subscription.

3.4 Unsolicited communication. Publishers should respect reasonable requests by the customer regarding methods of contact such as telemarketing or e-mail advertisements.

3.4 PRACTICE TO FOLLOW: A publisher honors the request of a customer to be removed from a telemarketing list, even if the publisher contracts with a third party for telemarketing services.

3.5 Timing. Publishers should mail out renewal notices at periods related to the date of subscription, and the notice should provide the expiration date of the current subscription.

3.5 PRACTICE TO AVOID: A publisher sends a renewal notice for a publication more than six months prior to the expiration of the subscription.

3.6 Forthcoming Edition or Substantial Revision. Publishers should advise customers about a forthcoming edition or substantial revision of a publication when they place an order for the publication or make an inquiry that may lead to its purchase if: (1) it is known that the new edition or revision is scheduled for publication within the next six months,

and (2) the pricing structure is such that the customer will need to make a comparable investment during the year to maintain a current subscription or title.

3.6 PRACTICE TO FOLLOW: Invoices for purchase of a new title should clearly indicate the period for which supplementation will be provided at no additional charge.

Principle 4: Customer Satisfaction. Publishers should seek to ensure customer satisfaction by honoring representations, answering questions, and resolving complaints and disputes in a timely and responsive manner.

4.1 Publishers should work collaboratively with customers to resolve problems, provide technical support, and improve products and service.

4.1 PRACTICE TO AVOID: A publisher turns an outstanding invoice over to a collection agency prior to contacting the customer in question.

4.1 PRACTICE TO FOLLOW: Customers should carefully document contacts with publishers identifying date and time the contact took place, name of person in customer service, description of the problem, and potential resolution.

4.2 Publishers should provide customers with easy access to information, including but not limited to, billing, access and usability, and technical support, offering a variety of communication methods.

4.2(a) Customer Service Provided by Telephone

i. Customer service should be provided on a schedule that meets the needs of the majority of the customer base.

4.2(a)i) PRACTICE TO AVOID: Providing customer service by telephone only between the hours of 8:00 a.m. and 5:00 p.m. ET, Monday through Friday.

ii. Auto menus should provide clear options, not have more than two levels, and provide direct access to an employee for problems that do not fit into the options provided.

iii. Publishers should strive to provide sufficient staff to handle the expected level of calls without leaving callers on hold for extended periods of time, and consider offering a call back option to customers who are "on hold" longer than a standard, reasonable period of time.

iv. Customer service telephone numbers should be provided on all correspondence, including invoices, and be displayed prominently on the website.

4.2(b) Publishers should provide as many alternative electronic options for asking questions as is possible with currently available technology, such as e mail, live chat, and via the Web site. All contact information disseminated in electronic format should be kept current.

4.2 (b) PRACTICE TO FOLLOW: Publisher provides a list of customer service FAQs on its Web site to address common questions.

4.2(c) Technical Support should be provided on a schedule that meets the needs of the majority of the customer base.

4.3 Publishers should ensure that employees responsible for customer service duties are trained, knowledgeable, and adequately prepared to resolve problems.

4.3(a) Customer service employees should have good oral and written communication skills.

4.3(b) Customer service employees should have a complete understanding of the basic products and services.

i. Customer service employees should receive adequate training before beginning communications with customers.

4.3(b)(i) PRACTICE TO AVOID: A publisher's customer service representatives are not familiar with the company's billing system and how payments are applied, and are unable to quickly and accurately identify and price any of the publisher's titles.

ii. Customer service employees should be provided timely information about all new products and special promotions.

iii. Customer service employees should have ready access to basic product and promotional reference materials.

4.3(c) Customer service employees dealing directly with customer questions should have access to basic information regarding customer accounts.

4.3 (c) PRACTICE TO FOLLOW: Every effort should be made to see that customers are able to get assistance at first contact and do not have to be transferred multiple times or have to repeat their questions more than once.

4.3(d) Customer service employees should follow up promptly on unresolved issues.

4.3(e) Customers should be provided with a direct channel for making complaints or commendations, not just a generic address or e-mail address.

4.4 Publishers should respond to all inquiries in a timely manner.

4.4(a) Publishers should promptly confirm the receipt of all inquiries.

4.4(b) In situations where a request requires time or research, customers should be regularly updated on the progress and given an expected response time.

4.4(c) Publishers should ensure that their promises to resolve problems are fulfilled in a timely manner.

Principle 5: Product Quality. Publishers should create products that are capable of withstanding reasonable use by customers.

5.1 Print Format. All print material should have wide enough margins and a binding that makes it easy to photocopy.

5.2 Hardcover Materials. Since it can be reasonably concluded that hardcover books are purchased for long-term use and may eventually be archived, publishers should meet the following standards in the production of hardcover materials.

5.2(a) ANSI/NISO Z39.48-1992 (R2009) regarding Permanence of Paper for Publications and Documents in Libraries and Archives.

5.2(b) ANSI/NISO/LBI Z39.78-2000 (R2010) regarding Library Binding.

5.3 Softcover Materials.

5.3(a) For softcover materials that are anticipated to remain on library shelves longer than two years, or which may logically be retained by a library for archival purposes (e.g., state codes), publishers should meet the following standards:

i. ANSI/NISO Z39.48-1992 (R2009) regarding Permanence of Paper for Publications and Documents in Libraries and Archives.

ii. Binding which will withstand reasonable use and which has sufficient margins to permit hardcover binding.

5.3(b) Softcover materials and supplements that are replaced annually should have paper and binding strong enough to withstand reasonable use.

5.4 Loose-Leaf Materials.

5.4(a) Binders should be heavy-duty and easy to operate.

5.4(a) PRACTICE TO AVOID: A binder provided for a loose-leaf service loses its alignment within a few months of reasonable use by a customer.

5.4(b) When the number of pages exceeds binder capacity, the publisher should take the necessary steps to relieve the overcrowding in a timely manner.

5.4(c) Paper in publications where changes are made to individual pages on an irregular basis should meet the ANSI/NISO Z39.48-1992 (R2009) standard regarding Permanence of Paper for Publications and Documents in Libraries and Archives.

5.5 Electronic Publications.

5.5 PRACTICE TO FOLLOW: Publishers should adhere to the Principles for Licensing Electronic Resources, adopted by the American Association of Law Libraries in 2004.
<http://www.aallnet.org/committee/reports/LicensingPrinciplesElecResources.pdf>

- 5.5(a) Electronic products should not be placed into the market until tested by a group of users that are representative of their actual anticipated customers.
- 5.5(b) Uninstall should be an included feature. Where possible, the uninstall feature should delete all added files. If a standard operating file has been modified by the program, the uninstall feature should return the file to the original properties or provide a message that the file needs to be reinstalled to reset the original properties.
- 5.5(c) Instructions and documentation should be easy to understand.
- 5.5(d) Statements describing the scope of information provided by electronic products should be included in the documentation for the products.
 - 5.5(d) PRACTICE TO AVOID: Information as to the currency of the publication is provided solely on the physical disks or in product documentation that is unavailable to the user who typically accesses the publication off a server or via an intranet.**
- 5.5(e) Products should clearly indicate their expiration date so that the publisher can be contacted if an update has not been received to try to ensure the ongoing availability of the resource.
- 5.5(f) Information as to the date and/or the number of the release should be included within the electronic text.

5.6 Microforms. Microform producers should follow the standards established by the National Archives and Records Administration (“NARA”) in 36 C.F.R. Part 1230.12(d) and 36 C.F.R. Part 1230.14 (b-d).

5.6 PRACTICE TO FOLLOW: Promotional literature and advertisements for microform products should indicate that the product meets NARA standards.

5.7 Audio/Visual Materials. Audio/video materials should be playable on any audio/video equipment that meets industry standards.

5.7 PRACTICE TO FOLLOW: Promotional literature and advertisements for A/V materials should indicate any non-industry standard equipment needed.

5.8 Replacements

5.8(a) Customers should be able to obtain replacements for missing or damaged parts of a product for a low or reasonable cost. Defective parts should be promptly replaced at no cost.

5.8(b) The process for requesting replacements should be widely publicized to customers.

5.8(b) PRACTICE TO FOLLOW: Replacement policies and instructions are clearly posted on publisher websites.