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

Introduction

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 legal information consumers, and covers the full range of their interaction, 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 that do not adhere to these guidelines*, but it does not set forth explicit methods of operation that could 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.
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,

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new business models and practices, and the needs of customers. AALL is committed to regularly reviewing the AALL Guide and updating it as needed.

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Definitions

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

1. **communication**

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

2. **customer**

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

3. **material information**

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

4. **product**

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

5. **publisher**

Any entity which is in the business of providing legal information for sale.

6. **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.

7. **supplementation**

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

8. **transaction**

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

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Principles for Fair Business Practices of Legal Publishers

The following statements represent the five principles upon which the AALL Guide is based. These principles should be considered along 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, and transactions.

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.

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

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

EXAMPLE: 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.

- b. Publishers should not mislead customers by creating a false impression of sponsorship, endorsement, popularity, trustworthiness, or product quality through the misuse of hyperlinks, “seals,” or other means.

EXAMPLE 1: A statement extolling the quality of a product is used in an advertisement without providing the source for the claim.

EXAMPLE 2: Although the source for a statement extolling the quality of a product used in an advertisement is provided, there is no indication of a relationship that exists between the source and the publisher.

2. Advertising and marketing should clearly indicate that it only represents an offer or encouragement to purchase.

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

EXAMPLE 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.

3. Electronic methods of communication that market products should accurately describe the nature and content of the products, consistent with the information provided in print advertising for the same products.

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- a. Hyperlinks should not be used to indicate a different or expanded content from the actual content of the product or to materially mislead the consumer as to the product.
- b. Electronic advertisers may use hyperlinks to add to or supplement information about goods or services but should not misleadingly use hyperlinks or information provided via a hyperlink to:
 - 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's business is its own

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Principle 2: Disclosure. *Publishers should provide full disclosure about their products, services, and transactions.*

1. All information about products, services, and transactions provided by publishers to customers should be clear, accurate, and easy to find.

EXAMPLE: 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. Publishers should disclose price and cost information to customers in a readily accessible manner.
 - a. Price lists for all products and services offered by the publisher should be readily available and up-to-date.

EXAMPLE: A publisher's Web site requires users to follow several links from the title summary page to obtain cost data.

- b. Description of standard discounts and variable pricing options for all products and services should be readily available.
3. The content of information that appears in both print and non-print advertising and marketing sources should be consistent.

EXAMPLE: A print advertisement lists a product's price, but an electronic advertisement does not.

4. Prior to confirming a purchase, publishers should provide all material information necessary for a customer to make an informed decision about products and services, including but not limited to:
 - a. Full title, author(s) or editor(s), ISBN or ISSN, and brand/publisher
 - b. Actual copyright date, prominently displayed in all communications, including marketing material

EXAMPLE: 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.

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- c. For electronic products, the frequency of updating
- d. Notice as to whether the product is a revision, recompilation, condensation or otherwise taken from another source

EXAMPLE 1: Information is not provided in advertising or marketing that a new title was created by extracting material from existing publications.

EXAMPLE 2: A product that is created solely by extracting material from existing publications is billed as a new product.

- e. Where applicable, expected publication date of next edition
- f. Complete physical description, including whether publication is a loose-leaf or bound volume, or contains a disk or CD
- g. Cost, including (1) estimate of any shipping and handling charges, (2) any supplementation costs, and (3) applicable discounts.

EXAMPLE 1: The price supplied prior to purchase does not contain all elements for which the customer will be responsible, such as shipping and handling costs. If shipping a CD costs \$25, the publisher should disclose this charge prior to purchase.

EXAMPLE 2: The price supplied for supplementation includes a charge for annual pocket parts but no estimated cost for revised volumes.

- h. If offered in multiple formats, provide a full description of each available format, including any differences in scope, price breakdown, updating, and license restriction(s)
 - i. Provide sufficient advance notice to allow customers to make necessary adjustments for changes in format such as replacing a looseleaf publication with an electronic version
- i. Updates
 - i. Actual extent and content of revisions or updates
 - ii. Expected frequency of updates or schedule of issues
 - iii. Whether cost of updating is included in the flat rate subscription or separately charged by shipment or some other arrangement

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- iv. Where possible, historic data on the cost of updating for the product
 - j. Whether a significant change in the format or nature of the product has (or will) occurred, including but not limited to changes of publisher or provider; expansion, addition, or deletion of available formats; and frequency of publication or supplementation
5. Publishers should provide, in a way that is easily understood by the customer, all the terms of a particular transaction, including but not limited to:
- a. Price or license fee to be charged
 - b. Any offered terms or limitations, including special offers
 - c. Expected shipping and handling charges
 - d. Titles to be shipped as part of subscription or standing order, but charged separately as an additional cost
 - e. Billing information
 - f. Return, refund and cancellation policies

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

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.

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

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

- 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 and represents a substantial expansion of the topic or purpose of the original subscription or product, the publisher should seek customer consent prior to shipment.

EXAMPLE: Without prior customer consent, a publisher ships to customers a "Research Guide" as part of an existing state statute service, when the "Guide" does not contain material specific to the state covered in the service and has not previously been part of the service.

- 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.

EXAMPLE: In the case of the "Research Guide" mentioned in the example 1.a., without prior consent a publisher ships multiple copies of the same guide to customers who subscribe to more than one state code.

- 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.

EXAMPLE: 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.

- d. 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). Publishers should seek customer consent prior to shipping materials that fundamentally alter, enhance or augment a product or subscription. In all cases, publishers should offer a

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simple procedure for returning products and cancelling subscriptions.

- e. Subscriptions to legal information products are traditionally “until forbid.” However, where the coverage of a product is changing substantially, particularly where it will result in a significant cost increase, publishers should notify customers prior to shipment.
 - f. Publishers should provide reasonable advance notice of new editions or recom compilations that will incur a single large upkeep cost.
2. **Fair negotiations.** Publishers should engage in open and fair negotiations with customers regarding licensing agreements and other contracts.
- a. Publishers should not bind their customers to a non-disclose clause as a non-negotiable requirement of doing business
 - b. Publishers should always negotiate contract terms with their customers. “Shrink wrap,” “click-on,” and other attempts to create agreements that do not provide customers with a fair opportunity to negotiate should not be used.
 - c. Publishers should adhere to the *Principles for Licensing Electronic Resources* (Final Draft, July 15, 1997).
3. **Substantive supplementation.** Product supplementation should be issued only when a significant change in the law has taken place, or when substantive additional content is provided.
- a. Customers should be provided with a complete and detailed description of the supplement’s contents.
 - 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.
4. **Unsolicited communication.** Publishers should respect reasonable requests by the customer regarding methods of contact such as telemarketing or e-mail advertisements.
5. **Timing.** Publishers should mail out renewal notices at periods related to the date of

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subscription.

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

6. **Forthcoming Edition or Substantial Revision.** Publishers should advise consumers about a forthcoming edition or substantial revision of a publication, when they place an order or make an inquiry that may lead to a purchase when: (1) that edition or revision is scheduled for publication within the next year, and (2) the pricing structure is such that the consumer will need to make a comparable investment during the year to maintain a current subscription or title.

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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.*

1. Publishers should provide customers with ready and convenient access to information through a variety of channels.
 - a. Customer Service Provided by Telephone
 - i. Hours should reasonably reflect business hours in all time zones.

EXAMPLE: Providing customer service only between the hours of 7:00 a.m. and 4:00 p.m. EST, Monday through Friday.
 - ii. Auto menus should provide clear options, should not have more than two levels, and should provide direct access to an employee for problems that do not fit into the options provided.
 - iii. Publishers should provide sufficient staff to handle expected level of calls without leaving callers on hold for extended periods of time, and offer a call-back option after a standard, reasonable period that a customer is “on hold.”
 - b. Publishers should provide alternative electronic options for asking questions, such as e-mail, fax, and the Internet, and should ensure that all contact information disseminated in electronic format is kept current.
 - c. Technical Support should be provided on a schedule that meets the needs of the majority of the customer base.
2. Publishers should ensure that employees responsible for customer service duties are adequately prepared.
 - a. Customer service employees should have good communication skills—both oral and written.
 - b. Customer service employees should have a complete understanding of the basic products and services.
 - i. Customer service employees should receive adequate training.

EXAMPLE: A publisher’s customer service representatives are not

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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 all product and promotion reference materials at hand and arranged for easy access.
 - c. Employees dealing directly with customer questions should have access to all necessary information regarding customer accounts. Customers should be able to get assistance at first link and should not be transferred or have to repeat their questions more than once.
 - d. Customer service employees should be sufficiently empowered to resolve basic problems.
 - e. Customers should be provided with a direct channel for making complaints or commendations, not just a generic address or e-mail address.
3. Publishers should respond to all inquiries in a timely manner.
- a. Publishers should respond to inquiries by close of second business day if request was made by telephone, facsimile, or e-mail.
 - b. Publishers should provide a written response within seven days of receipt of a written request.
4. Publishers should ensure that promises to resolve problems are fulfilled in a timely manner.
5. Publishers should work collaboratively with customers to resolve problems and improve products and service.

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

1. **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.
 - a. ANSI/NISO Z39.48-1992 (R1997) regarding Permanence of Paper for Publications and Documents in Libraries and Archives.
 - b. ANSI/NISO/LBI Z39.78-2000 regarding Library Binding.

2. **Softcover Materials.**
 - a. Softcover materials that a publisher anticipates will remain on library shelves for a period of time exceeding two years or which it may logically expect to be retained by a library for archival purposes (e.g. state codes) should meet the following standards.
 - i. ANSI/NISO Z39.48-1992 (R1997) regarding Permanence of Paper for Publications and Documents in Libraries and Archives.
 - ii. Binding which will withstand reasonable use and which is designed to provide sufficient margins so that a library may easily have the item professionally bound in hardcover should it so desire.
 - b. Softcover materials and supplements that are replaced annually should have paper and binding strong enough to withstand reasonable use.

3. **Loose-leaf Materials.**
 - a. Binders should be heavy-duty and easy to operate.

Example: A binder provided for a loose-leaf service loses its alignment within a few months of reasonable use by a customer.
 - b. The number of pages should not exceed binder capacity. If that happens, contents should be split into multiple binders.
 - c. Paper in publications where changes are made to individual pages on an irregular basis should meet the ANSI/NISO Z39.48-1992 (R1997) standard regarding Permanence of

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Paper for Publications and Documents in Libraries and Archives.

- d. There should be a procedure in place for libraries to obtain replacements for broken binders and missing contents pages for little or no cost.
4. **Microforms.** Since it is known that libraries tend to purchase microforms for archival purposes, microform producers should follow the standards established by the National Archives and Records Administration in 36 C.F.R. Part 1230.12(d) and 36 C.F.R. Part 1230.14 (b-d).
5. **Electronic Publications.**
- a. Electronic products should not be placed into the market until fully tested by a group of users representative of the actual anticipated customers.
 - b. Labeling of electronic products should clearly inform the user of system requirements and any known system incompatibilities.
 - c. Uninstall should be an included feature.
 - d. Instructions and documentation should be easy to understand.
 - e. Statements describing the scope of information provided by electronic products should be included in the documentation for the products.