

Contents

The Editor's Corner	2
From the Chair	2
New Members Join CRIV	3
Mediation Subcommittee Takes on Atypical Dilemmas	4
West Pricing and Unsolicited Shipments: Teleconference Report	5
CRIV Surveys Librarians' Preferences for Electronic Services	6
AALL Adopts Fair Business Practices Guide	7
O'Quinn Library Faces Changes with BNA's Electronic Package	8
NELLCO Looks at the BNA Law School Program	10

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The CRIV Sheet

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The Editor's Corner

The dominant theme that runs through this issue of *The CRIV Sheet* is library responses to changes in electronic services. CRIV Chair Carol N. Rogers notes recent appeals for the CRIV to be more involved with developments in BNA's law school package, while Michelle Wu and Tracy Thompson demonstrate how an individual library and a library consortium confronted problems related to online access to BNA products. Though BNA is the focus of these discussions, the CRIV is much more interested in industry trends. Therefore it authorized and conducted a survey to determine library preferences for electronic services. This survey is briefly described here; results will soon be available.

On a related subject, this issue features a report on the drafting and adoption of the "AALL Guide to Fair Business Practices for

Legal Publishers." The guide is among the most important AALL endeavors affecting relations with vendors in recent years.

Also featured is a report of the activities of the mediation subcommittee in recent months and a report of a teleconference with West this past fall.

Finally this issue introduces four new members of the committee.

If there are subjects you would like to see addressed in a future *The CRIV Sheet* or if you would like to contribute an article, please contact Editor Lovisa Lyman at lymanl@lawgate.byu.edu.

Carol N. Rogers

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From the Chair

The CRIV is now six months into its 2002–2003 year. As I consider our accomplishments in that six months and what I hope we will achieve between now and the Annual Meeting in July, I thought I'd step back and provide a year-to-date summary.

Several articles in this issue of *The CRIV Sheet* are devoted to the delivery of electronic services, a topic that is of interest to us all and that certainly affects every one of us. One of the topics we discussed during the CRIV business meeting in July 2002 in Orlando, Fla., was the growing number of requests from librarians for the CRIV to become more involved in a dialogue with BNA about its electronic subscription program for law school libraries. The CRIV had begun discussions about BNA's law school package as far back as March 2001 during a site visit to its Washington, D.C., headquarters. At the time, BNA had already contacted the New England Law Library Consortium to consider a new method of packaging certain electronic subscriptions for the academic law library market. Almost two years later, BNA continues to expand the law school program to mixed reviews — not only from NELLCO but also from other consortia and individual libraries across the country.

The CRIV recognized the increased member interest in the topic. As a follow up to its discussions in Orlando, the CRIV surveyed how libraries use electronic services and how the BNA program would or would not affect their use of electronic titles. This survey is responsive to the AALL membership and promotes a better understanding about the context in which these services are evaluated and used. It was not intended in any way to be confrontational. This was the first time the CRIV undertook an electronic survey; I believe it has been successful. We received what we considered a good response. The CRIV sincerely appreciates all the participants' input. The survey and the results will be posted on the CRIV Web site.

Besides that hot topic, the CRIV has been busy on other matters. The Educational Programming Subcommittee has added three programs for the Annual Meeting in Seattle in 2003 to the traditional CRIV Forum. A short program will involve a bit of role playing and — we hope — allow each of us to see ourselves at our best and not so best, and even to laugh at ourselves. "The Money-Go-Round: What to Do When Payments Go Astray," a 30-minute program, will feature librarians portraying what we should and should not say when talking with vendors.

The introductory program, "When List Is Not Necessarily List," will focus on the librarian-vendor relationship related to general negotiations and renewals and answers the key question about negotiations: Can librarians negotiate the price on that annual renewal? The third program on "Negotiating International Licensing Agreements" takes an advanced look at negotiating licensing agreements in the international arena. While not set in stone, the CRIV is considering a session on CRIV Tools for its annual forum.

The CRIV had the pleasure this past year of working with the AALL Special Committee on Fair Business Practices, whose "AALL Guide to Fair Business Practices for Legal Publishers" was approved in November 2002 by the AALL Executive Board. Chair Frank G. Houdek and the special committee deserve accolades all around for the tremendous amount of work they put into developing the guide. It promises to be an important resource for promoting a better partnership between librarians and vendors.

The CRIV has also worked out an arrangement with the Technical Services Special Interest Section's Preservation Committee. The CRIV has appointed a CRIV liaison, Jan Anderson, to the TS SIS committee, and the Preservation Committee has appointed one of its members, Patricia Turpening, to the CRIV. The Preservation Committee has established liaisons with several SIS groups.

These liaisons are designed to raise awareness about preservation and to encourage the inclusion of preservation issues in the mission statements, programs and activities of various groups within AALL. The CRIV's role in preservation centers on communicating to vendors the importance of archival and preservation issues to libraries and their patrons and deals with specific physical problems with publications that might arise, such as binders that do not last.

The CRIV has been busy with vendor relations in general. This issue of *The CRIV Sheet* features a column from the Mediation Subcommittee chair as well as a summary of the CRIV's teleconference with West on pricing issues, unsolicited shipments, and the reinstatement of standing orders to Hornbooks and Nutshells.

As I review some of the activities of the CRIV over the past six months, we've been pretty busy! I hope that the survey and the follow-up report will bring positive results and information that benefit both librarians and vendors. I look forward to Seattle and the programs we have the opportunity to present. I also look forward to our continuing relationship with special committees and liaison opportunities.

I consider myself quite lucky to work with a committee of such talented people. Please take a moment to get acquainted with our new members featured in this issue. I would also appreciate your feedback on the CRIV's activities and what we might do better.

New Members Join the CRIV

Karen B. Douglas, JoAnn Hounshell, Lucy Moss and Jill L. Porter accepted two-year appointments to the CRIV in 2002. All four have assumed subcommittee assignments and are actively contributing to the Association.

Karen B. Douglas serves on the Site Visits and CRIV Tools Subcommittees.

Douglas has been head of technical services at Georgia State University College of Law in Atlanta since 2001 and has a long history in library acquisitions. She was previously the acquisitions/serials librarian at Georgia State from 1998 to 2000. Before joining Georgia State, Douglas served as the acquisitions/serials librarian at George Washington University Law Library in Washington, D.C., from 1993 to 1998. From 1992 to 1993, she was project manager for acquisitions/serials at the U.S. Department of Justice Library, also in Washington, D.C. Prior to 1992, Douglas held several reference and acquisitions positions in public and special libraries. She holds an M.S. in library services from Columbia University in New York and a B.A. in history from Boston University.

In addition to serving on the CRIV, Douglas is secretary for the Consortium of Southeastern Law Libraries and a member of the 2003 Program Committee of the Southeastern Chapter of the American Association of Law Libraries. Douglas is also a member of the Technical Services Special Interest Section's Awards Committee and chaired the TS SIS Acquisitions Committee from 2000 to 2002. She wrote an article on automated library system migration in the March 2000 issue of *AALL Spectrum* and an article on library preferences for electronic services in this issue of *The CRIV Sheet*.

JoAnn Hounshell is on the CRIVPage and Mediation Subcommittees.

She has been head of acquisitions at the Pritzker Legal Research Center at the Northwestern University School of Law in Chicago since 1995. In her position, she wears many hats, including analyst, problem solver and investigator.

"As an analyst, I track spending patterns within the collection and try to forecast future budgetary needs," Hounshell said. "As a problem solver, I am constantly interacting with publishers and vendors to resolve problems with invoices, serial receipts, orders and contracts."

Hounshell also works with bibliographers on collection development decisions and oversees the library's license agreements for electronic services. As an investigator, she tracks down elusive books or journals that may or may not have been published or may or may not still be in print. She also investigates new technologies to enhance library services.

The value that the CRIV brings to the law librarianship community is not lost on Hounshell. "The CRIV is an acquisitions librarian's strongest advocate in business relations with legal vendors," Hounshell said. "The CRIVPage, Toolkit and CRIVGrams have been invaluable resources."

"As a member of the committee, I am witnessing firsthand that the CRIV listens to the membership and works hard to address their concerns. The committee reaches out to librarians and vendors but also works diligently with the Special Interest Sections to foster productive communication between all the parties. The CRIV is committed to representing the interests of all librarians."

Lucy Moss, who works on *The CRIV Sheet*, is the senior reference librarian at the Illinois Institute of Technology's Downtown Campus Library in Chicago. Her responsibilities include arranging electronic database subscriptions, reviewing site licenses and developing the collection. The Downtown Campus Library comprises the collections of Chicago-Kent College of Law, Stuart Graduate School of Business and the Library of International Relations.

Moss has an M.S.L.S. from the University of Wisconsin in Madison, Wis., and a J.D. from Northwestern University School of Law in Chicago. Before going to Chicago-Kent in 1991, she was the assistant director of the National Clearinghouse for Legal Services and managing editor of *Clearinghouse Review*.

Lovisa Lyman

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Prior to attending law school, she was an audiovisual librarian at the Sheboygan, Wis., public library.

Jill L. Porter has been appointed to the Educational Programming Subcommittee and *The CRIV Sheet*.

She has been the director of library relations at Practising Law Institute in New York since 1998. Prior to that she was both a reference and technical services librarian in public and private settings.

Since arriving at PLI, the library relations department has tripled in size (to three!) and assumed management responsibility for

PLI's Course Handbook Series subscriptions and treatise standing-order plans. The mission of the library relations department, though, remains acting as a liaison between librarians and PLI. Having one-on-one and group discussions with librarians, participating in library associations and trade shows, assisting in the development of products and services useful to librarians, and facilitating account resolution are key parts of this mission.

During her last seven years as a law firm librarian, Porter cheered on CRIV efforts from the sidelines. Now that she's a member of the CRIV, Porter considers the committee appointment an honor and looks forward to the many opportunities to serve the committee.

Ann H. Jeter

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Mediation Subcommittee Takes on Atypical Dilemmas

This year the Mediation Subcommittee has been able to take a break from the usual billing and account questions to work on several less standard vendor-library predicaments.

During the summer of 2002, a librarian sought CRIV assistance for a face-to-face mediation with a vendor about a problem with its usage limit. The librarian was unaware of the vendor's usage limit, which had been set far too high. As requested in the CRIV's mediation guidelines, the librarian had carefully documented her contacts with the vendor and had gone to the senior executive level to attempt to resolve the problem before contacting the CRIV. It was encouraging to observe the seriousness with which the vendor treated the CRIV's involvement, and the CRIV assured them that the CRIV's guidelines specify that mediations are conducted in confidence. Fortunately the CRIV was able to facilitate a dialog between the librarian and vendor, formulating a compromise acceptable to both parties.

Another request for mediation resulted from West's implementation of its new Business Systems Initiative. Initially the new system could not handle standing orders to certain monographic series. Academic library customers rely on standing orders for West's Nutshell, Hornbook and the Practitioner Treatise series to keep up with new editions of these basic educational texts. When West informed customers that it would no longer support standing orders for these publications, many librarians and the Technical Services SIS Acquisitions Committee contacted the CRIV about restoring the service. The sheer size of these series makes it very difficult for customer service representatives to provide current information about the texts individually. The West Web site did not always list all new editions of Nutshells and Hornbooks; in some cases the titles listed varied slightly from the title pages, making it difficult to verify some of the newest publications in these series. In early November 2002, West restored this service — a positive outcome the CRIV was happy to announce on library listservs.

In an unusual matter, a small vendor requested the CRIV's help in a dispute with two large vendors. While we were pleased with the acknowledgment of the CRIV's value in resolving vendor problems, the CRIV was unable to handle this request.

The committee operates as an ombudsman for AALL members as consumers and cannot get involved in disputes between vendors.

The CRIV continues to receive complaints about unsolicited shipments to law libraries. These shipments are generally driven by marketing departments, not customer service, and result in sufficient sales to justify their use by publishers. The CRIV strongly encourages all vendors to discontinue this practice for its law library customers, as Aspen Publishing has recently done. Alternatives include using Internet mailing lists to announce new titles and ask permission to ship them to customers or employing the communication vehicles already in place between libraries and their local representatives. The recently drafted *AALL Guide to Fair Business Practices for Legal Publishers* should serve as a valuable aid in dealing with these shipments in the future.

Other issues the Mediation Subcommittee has addressed this year include changes in West subscription notices; production errors in West's *California Judicial Code*, West's *California Appellate Reports* and the *USCA Popular Name Tables*; and a change in LexisNexis' pricing of table-of-contents databases.

The Mediation Subcommittee is proactive in anticipating widespread problems and communicating with vendors at an early stage about problems. Committee members monitor Law-Lib and other law library listservs for complaints, verify and sort out some of the details, and put librarians in touch with the vendors' customer service representatives who are prepared to resolve their problems. The CRIV will follow up, if necessary, to communicate further information to listserv members.

When trying to resolve a vendor-related problem in your library, use the sample letters available on the CRIV Web site at <http://www.aallnet.org/committee/criv/resources/tools/smplltrs.htm>. A request-for-mediation form can also be found on the CRIV's Web site at <http://www.aallnet.org/committee/criv/mediation/requestform.htm>.

Please feel free to contact any member of the Mediation Subcommittee about issues that may affect large portions of the law library community or, as a last resort, in resolving problems with vendors.

West Pricing and Unsolicited Shipments: Teleconference Report

In light of escalating prices for legal resources, law libraries find it increasingly difficult to justify maintaining seldom-used titles. According to listserv discussions in the fall of 2002, soaring costs of resources have led some libraries to cancel long-standing subscriptions to traditional titles. Other libraries have discontinued some services for the present, with the intention of re-subscribing every few years. A number of librarians were concerned about West's release of a high volume of new revisions, unsolicited shipments and a spike in prices for West's print volumes.

The CRIV wondered whether the pricing trend and its impact on law libraries were likely to continue. And so Carol N. Rogers, CRIV chair, and Ann H. Jeter, Mediation Subcommittee chair, requested a conference call with West in October 2002 to discuss pricing and unsolicited shipments. The following is a report of the Oct. 17, 2002, call in the form of a question-and-answer session.

CRIV: What goes into pricing a title?

West: Our goal in producing any title is to support our customers' success. That said, developing a treatise or creating a digest is a complex process that involves literally thousands of hours of intellectual work by:

- West authors, the renowned experts who make their authority and expertise available to our subscribers;
- West attorney editors, who leverage their collective expertise, knowledge and skill in analyzing and interpreting U.S. law;
- The West production department, which every year produces more than 66 million books; and
- Marketing and support staff, who analyze the market need for specific titles, then create the communications and support programs to effectively help customers identify whether a specific title is appropriate for their practices.

There are also indirect costs: Authors are paid royalties. The West Data Center, which covers 200,000 square feet and contains approximately 70 terabytes of data — more than seven times the information in the Library of Congress — requires significant human and technology capital to maintain. Customer service, account managers, reference attorneys, and librarian- and academic-support programs exemplify other costs incurred by West in serving the needs of legal professionals.

CRIV: What is the procedure for pricing a title?

West: The true worth of any reference work is the value it delivers to the user, and our goal is to create the highest-value print and online information products in the most timely manner. Pricing for any title reflects a broad range of costs associated with creating the work, some of which may not be immediately obvious. For example, *Business and Commercial Litigation in Federal Courts*, a seminal West treatise, is a

six-volume set with more than 150 contributing authors, including former Secretary of State Warren Christopher, distinguished federal judges and former officers of the American Bar Association. Even a single-volume treatise with a small subscriber list can require more than 3,000 hours of writing time. Creating any title requires significant time and intellectual capital. It also requires a comprehensive marketing, service and support, and technology infrastructure to support the product once it is launched.

CRIV: Is there a fixed return sought for each title or product?

West: No. But it is fair to say that West, like its law firm customers, is a business. We set our prices to reflect the value of our products. Factors that affect price include complexity of the product, author royalty agreements, marketing, training and support costs, among others.

CRIV: Is there any group that reviews marketing and pricing of titles or products?

West: Yes. In fact we review such factors at various stages of the product-development process. Our content teams and marketers collaborate on initial product development, pricing and marketing decisions. And final "to-market" decisions are vetted by a special task force.

CRIV: The reinstatement of standing orders for the Nutshells, Hornbooks and Practitioner Treatise series would help librarians plan and budget. Will that happen?

West: Yes. West recently reinstated standing orders for these series.

CRIV: The CRIV has on several occasions asked West for annual billing on certain specific titles or series, such as the national and regional reporters, since that service is already available for the renewal of the advance sheets. Are there plans to offer annual billing?

West: West understands your concerns and examines this issue on an ongoing basis. Given the multitude of market variables over which we have no control, it is neither practical nor possible to offer annual billing for print titles or series. For example, print production from series to series and from year to year changes constantly. The workload of our judicial system is continually growing, resulting in an increase in the number of volumes produced in our reporter series. There are some things, however, that we can do. For example, we are committed to providing all customers with better communication and information to help plan budget and space requirements for their collections.

CRIV: Based on market information the CRIV has obtained or interpreted, West's 2003 price increases

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for print volumes appear to be higher than those for other publishers. Why is the projected average higher for West?

West: There are four main reasons: 1) continued investments in West products to ensure that they deliver the power, value and competitive edge that our customers expect; 2) the impact of changes in the market, customer and media mix — simply put, a reduced demand for print products makes them more expensive to produce; 3) the increased number of reported cases; and 4) the impact of account-specific factors, such as one-time discounts on specific subscriptions or sets.

We also continue to invest in the Topic and Key Number System, the classification system that helps the researcher find exact points of law more efficiently and effectively.

And finally, we have made significant investments in our content and data infrastructure that help us capture the ever-increasing amount of legal information our customers depend on.

CRIV: In an e-mail to the Law-Lib listserv, Ken Svengalis suggested, "West needs an ombudsman or gatekeeper who screens each new title which others in the company wish to release as a general shipment to some subscriber list." This group would review any title for broad distribution. Would West entertain such a watchdog group on an ongoing basis?

West has a cross-functional task force comprised of members of customer service, librarian relations, manufacturing, customer experience and content-development areas that has responsibility for assessing general shipment criteria for each title.

CRIV: Why can't West mark accounts for no unsolicited shipments if that is what a library requests? Are there restrictions in the new business system that West implemented last year that prevent this? If so, are there plans to overcome those restrictions?

West: We believe our practices reflect the spirit of the AALL fair business practices draft guidelines. It also is important to note that many of our sets, such as the National Reporter System, [American Law Reports] and West Digests, are designed as an integrated research system. As a set, they provide powerful integrated, complementary and timely information, finding aids and supplements that best meet the legal professional's needs. An incomplete set compromises the value to the researcher. In the spirit of the AALL guidelines, we have the practices and processes in place to assess general shipment criteria for each title and at the same time ensure the integrity and value of our customers' investment in our research products. If materials received are determined to be no longer necessary to the firm's collection, West continues to offer complimentary return shipping. Additionally, customers can contact customer service to review and adjust the titles their firms have on subscription.

CRIV: *The Law of Modern Payment Systems* was sent to customers as a product that would "complement" the White and Summer's treatise, *Uniform Commercial Code*. The accompanying brochure suggested that it be shelved next to the White and Summer's title. The Library of Congress assigned different subject headings and call numbers to the new title, putting it some distance from White and Summer. Did anyone outside the marketing department consider where the book would actually go or make any recommendations in regard to the subject headings?

Shelving instructions are recommendations and nothing more. We trust that each librarian will shelve research volumes appropriately for his or her own cataloging process and collection needs.

The CRIV wishes to thank West for the opportunity to speak candidly and appreciates the exchange. The CRIV also thanks Anne V. Ellis for her assistance in preparing this report.

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CRIV Surveys Librarians' Preferences for Electronic Services

The CRIV sent an electronic survey in September 2002 to all library types to assess their needs and preferences in electronic services after two major publishers removed their publications from LexisNexis and Westlaw.

BNA made major changes in its electronic law school program package on June 15, 2002. Law schools no longer have access to BNA publications online through LexisNexis and Westlaw unless they purchase one of the core packages outlined in the law school program directly from BNA. Access on LexisNexis and Westlaw is limited to these titles only. Any a la carte titles they might add to the core titles would be available only on the BNA stand-alone platform. Either the Internet protocol address or password access would be available. This new plan generated much discussion on the listservs. Many academic libraries,

including some consortia groups, have postponed subscribing to the new plan.

Similarly Research Institute of America/Warren, Gorham and Lamont announced that as of Jan. 1, 2003, RIA/WGL tax products will no longer be available on LexisNexis. To access these databases, libraries need to purchase stand-alone subscriptions or access the services through their Westlaw accounts.

Discussions on listservs, during the Annual Meeting, and in various committee and consortia meetings indicated that many academic law libraries are concerned about BNA and RIA/WGL's announcements. Thus an academic law library asked CRIV in September to investigate what appears to be a disturbing trend by publishers to pull their publications from LexisNexis and

Westlaw. Although it has always been the practice of a few publishers such as *Congressional Quarterly* and *Congressional Information Service* not to include their titles on outside electronic subscription services, academic law libraries are now concerned that, as more publishers adopt this practice, many libraries may be forced to discontinue access to the electronic titles because the cost for access would be prohibitive. The question of reliable access to BNA and RIA/WGL electronic products is also a concern because it is unclear whether either publisher's electronic infrastructures can handle the demands of current and future customers.

These developments prompted the CRIV to prepare an electronic survey about the electronic services various types of libraries prefer and need. As of this writing, the committee is still compiling the survey results. The CRIV plans to share the results with electronic services vendors so that they might better understand libraries' needs and expectations. The CRIV wants vendors to keep the survey information in mind as they develop electronic services that meet the needs of libraries yet remain profitable to the vendors. The CRIV will publish the survey results on the CRIVPage when the responses have been processed.

AALL Adopts Fair Business Practices Guide

The AALL Executive Board approved the *AALL Guide to Fair Business Practices for Legal Publishers* Nov. 2, 2002, providing a blueprint for the business interactions unique to law librarians and publishers.

While it is not necessarily intended to replace the Federal Trade Commission's *Guides for the Law Book Industry*, the AALL guide plays a similar role in promoting fair practices. For the first time since the FTC rescinded its guides in 2000, law librarians and publishers now have a resource that addresses many of the key issues that mark their relationship.

Background and Method. On Jan. 19, 2000, the Federal Trade Commission rescinded its *Guides for the Law Book Industry* (16 C.F.R. pt. 256). The guides had served as a standard of acceptable practices by legal information providers since their adoption in 1975 (40 Fed. Reg. 33436). In the rescission notice, the FTC stated, "Industry associations, or purchaser associations, such as AALL or A[ssociation of] A[merican] L[aw] S[chools], 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" (65 Fed. Reg. 2868).

Pursuant to outcome 4B of the 2000–2005 Strategic Plan, which states, "Legal publishers follow fair business practices," AALL appointed a Special Committee on Fair Business Practices to "respond to the expressed need for a set of guidelines for law publishers doing business with librarians and other consumers of legal information." The special committee was composed of Chair Frank G. Houdek, Kathy Carlson, Chris Graesser, Kay Todd and Michelle M. Wu. Robert Oakley served as Executive Board liaison, and Roger H. Parent as staff liaison.

The special committee embarked on a process designed to realize "a model code of fair business practices for legal publishers that is an accepted standard in the industry," in accordance with the 2000–2005 Strategic Plan Initiative 4b.1. In fall 2001 the special committee invited all interested parties to submit their suggestions for provisions and topics that ought to be included in an AALL fair business practices guide. Respondents from all types of law libraries submitted comments

covering a wide range of subjects, including marketing; prices; add-ons, related titles, and similar practices; supplementation; customer service; product quality; electronic products; merger and consolidation; and enforcement.

The special committee carefully studied the suggestions it received prior to meeting in early January 2002. At that meeting, the committee discussed the content and structure of the AALL guide and began drafting the guide. The guide underwent several drafts in the succeeding months. The special committee ultimately shared a "preview draft" with the CRIV and several major legal information publishers, including West, LexisNexis, CCH and BNA, as both a courtesy before generally releasing a "public draft" and as a way of obtaining initial feedback from important audiences for the AALL guide.

The special committee used feedback about the preview draft to prepare a "public draft" of the guide, which was widely distributed to AALL members and other interested parties, including legal information publishers, in June 2002 for written comments and suggestions. The public draft was placed on the CRIVPage and posted to various law library-related discussion lists. All AALL members were notified of the public draft through an AALL broadcast e-mail member announcement. As with the earlier comment period, a variety of respondents provided useful suggestions to the special committee.

In addition to this period of written comments, the special committee conducted a "town meeting" at the 2002 AALL Annual Meeting in Orlando, Fla., where attendees shared their views about the draft directly with the special committee. The special committee also met privately with representatives from several publishers during the Orlando meeting. The special committee subsequently received additional written comments from members and vendors, including letters from the two publishers with whom the committee had met in Orlando.

After considering all the written comments and the suggestions at the town meeting and throughout the Orlando meeting, the special committee worked from August to September 2002 to prepare a final version of the AALL guide, along with implementation recommendations, for the consideration and approval of the AALL Executive Board at its meeting in November 2002.

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AALL Guide to Fair Business Practices for Legal Publishers. AALL will widely distribute the hard copy of the *AALL Guide to Fair Business Practices for Legal Publishers* to members, publishers and other interested parties in the near future. In the meantime, the guide is available in electronic form on the AALL Web site, AALLNET, at <http://www.aallnet.org/about/policy.asp>. (The link is on the AALL policies page, under "AALL Recommended Guidelines.")

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 a number of subprinciples and examples. The latter, including both "practices to follow" and "practices to avoid," are intended to help explain the principles, but the AALL guide does not explicitly require any methods of operation because it is not intended to interfere with particular business models. As indicated in its 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 five principles of the AALL guide are:

- Publishers should engage in truthful and accurate communication with their customers or potential customers.
- Publishers should provide full disclosure about their products, services, prices and transactions insofar as allowed without violating contractual agreements or revealing proprietary information.
- Publishers should engage in fair dealings with their customers.
- Publishers should seek to ensure customer satisfaction by honoring representations, answering questions, and resolving complaints and disputes in a timely and responsive manner.
- Publishers should create products that are capable of withstanding reasonable use by customers.

Conclusion. *The AALL Guide to Fair Business Practices for Legal Publishers* is the culmination of a rigorous and thorough process. While the special committee believes that librarians and publishers agree on many of the principles and subprinciples presented in the guide, the committee is also aware that the guide is not, and never will be, a "perfect" document. And so, one of the implementation recommendations emphasizes the need to continually review and revise the AALL guide in light of changing circumstances. Nevertheless, the five principles of the AALL guide cover the most basic concerns of law librarians in the area of fair business practices: truthful and accurate communication, disclosure, fair dealing, customer satisfaction and product quality. For this reason, the special committee considered the AALL guide in its present form to be ready for approval by the Executive Board. The Executive Board will appoint a new special committee to monitor the use and effectiveness of the guide over the next two years, as recommended by the Special Committee on Fair Business Practices.

The Special Committee on Fair Business Practices is under no illusion that the simple promulgation of the AALL guide will solve all existing problems associated with the business practices of legal publishers and prevent future ones from arising. However a good faith effort on the part of the legal publishing community to implement the guide's provisions, coupled with the use of these principles by librarians as they set their expectations of publishers accordingly, will go a long way toward reducing tensions and solving problems.

The special committee would like to thank all the individuals and groups who participated in the dialogue on this important subject. It would have been impossible to develop the AALL guide without such active participation. As chair, I particularly wish to thank the members of the special committee itself; each worked hard to bring the goal of a fair business practices guide to fruition.

Frank G. Houdek served as chair of the Special Committee on Fair Business Practices.

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O'Quinn Library Faces Changes with BNA's Electronic Package

When BNA renegotiated its contracts with LexisNexis and Westlaw in June 2002, academic subscribers no longer had comprehensive online access to BNA products. Instead, BNA offered academic law libraries direct subscriptions to BNA electronic products in a set of core packages, available with different pricing schemes to small-, medium- and large-sized libraries, and a set of a la carte titles. If a library purchased a core package from BNA, access to those titles could be maintained through LexisNexis and Westlaw. A la carte subscriptions would be accessible only through BNA's direct interface.

The O'Quinn Law Library at the University of Houston struggled with some of the issues raised by this change. During the process, BNA was very accommodating. They helped me contact local and national representatives so that I could discuss my concerns. Robert Fuchs, BNA's law school program manager, and C. Lynn Martin, the manager of the Business Solutions Group, visited the University of Houston and spent an hour answering questions relating to the electronic law school package. Special thanks are also due to one of our local representatives, Susan Casey, who spent hours devising alternative pricing schemes for the library to consider.

The following concerns were the major focus of my discussions with BNA:

Bundling. When the program was first launched, print and online publications were bundled together, making it difficult to tell exactly how much each format would cost independently. Since we could not guarantee that our library would always be able to subscribe to both formats, it was important for us to know exactly what costs we would face should our needs change over time.

Likewise, the law school options for electronic subscriptions, as first introduced in 2001, consisted of prepackaged bundles. Because unbundling the packages was not possible, a library that wanted only a single title from the package would be unable to secure a subscription under the discounted program. BNA addressed this problem in 2002 in the second year of the law school program. The company unbundled the titles in the packages in response to feedback from librarians, allowing libraries to order individual titles a la carte.

Cost. As the law school program was introduced, libraries were suddenly asked to come up with funds for a product line that had previously been included in other subscriptions. Though I realized that this was primarily a budgeting issue rather than an issue with BNA, it was nonetheless an unavoidable factor in my analysis. The bottom line: The library had to produce additional funds for a service with no greater return than the LexisNexis and Westlaw services it had previously used.

BNA's cost analysis boiled down to the argument that its product is valuable and that libraries should be willing to pay for value. BNA products do contain significant value for the legal community. However, making the leap from conceding its value to paying the asking price was not as simple for me. The price still had to be proportional to the value received. Academic libraries neither have bottomless wells of funding nor can they bill their clients each time a new cost is incurred. The O'Quinn Law Library's determination of value is based on comparisons of other products in the marketplace and from actual usage data.

The library has a number of other electronic subscriptions, as do most other libraries. Based on a comparative analysis of the subscriptions and a general review of other online resources, the library concluded that BNA's pricing was significantly higher than average. As for reporting on usage, BNA is unable to provide usage statistics to libraries; the company deems the gathering this data as the responsibility of the subscribing library. The O'Quinn Law Library reasons that, without such statistics, it is difficult to judge reliably if a resource is actually used frequently enough to justify its cost.

Utility. In terms of searching and clipping as well as overall flexibility, the BNA electronic service was not as easy to use and comprehensive as its equivalent databases on LexisNexis and Westlaw. LexisNexis and Westlaw both allowed more complex searching and for the creation of unique search strings for any interested user. Technical support in the evenings and on weekends and usage reports are other advantages of LexisNexis and Westlaw.

Archival access. We also discussed archival access with BNA. Academic libraries frequently have patrons engaged in historical research. Consequently we were concerned that — as with all our other electronic subscriptions — we were purchasing temporary access, not ownership. Should we find our budgets tightened to the point where we can no longer afford multiple formats, archival access would become a key factor in purchasing decisions. The BNA representatives were receptive to this concept and promised to bring the question back to the home office for further consideration. Some proposed solutions included making all issues available free for one year online on the BNA Web site and providing subscriber libraries with an archival CD at the conclusion of each year.

After the BNA representatives answered my questions, I explored other pricing avenues. I asked BNA to produce several pricing schemes for me, such as access for faculty only, access to specific products for faculty in specialized areas, site license, and access for librarians only (mediated searches). I also approached LexisNexis and Westlaw for information on commercial licenses. Because their search engines are much more malleable than BNA's, it made sense to bargain for the product with greater utility. Pricing was based on the premise that all searches would be mediated through a librarian. However, upon obtaining the relevant usage statistics from LexisNexis and Westlaw, it became obvious that a commercial contract would not be a viable alternative for us.

While I was negotiating with BNA, I spoke to the faculty about the products, the format and pricing choices the library was facing. This step was necessary because the negotiations would take us well past the time when BNA would terminate our access to its products on LexisNexis and Westlaw, so the faculty had to be notified that the service was ending. When approached, the faculty was divided. Many of the faculty members said that the cost did not reflect the value that the school would receive, while others maintained that access was essential.

After listening to the various viewpoints and analyzing all the cost data, we came to a compromise. Due to Tropical Storm Allison, along with other related events, the library had some unspent funds for the year. The library decided to subscribe to specific products for one year and monitor usage. If usage was not sufficient to justify the price, the library would not renew its subscription the following year. This seemed to satisfy the majority of our users.

As I look ahead to the process of reconsidering the BNA law school package for next year, several issues at the center of O'Quinn Law Library's negotiations with BNA are still unresolved. The future discussion will likely be framed by the same list of concerns and issues, some undoubtedly shared by other academic law libraries:

Bundling. As noted above, BNA has partially resolved this issue by unbundling its products. The library will look into all available pricing and format options.

Cost. Value, in relation to cost, will be reconsidered next year. Not only will the library consider the product as it stands alone

but also whether subscribing to the BNA online resources is more important than subscribing to some of the library's other specialized publications. The library will further assess whether subscribing to these titles in multiple formats is a wise use of funds, especially given the library's commitment to maintain a strong collection in a wide variety of areas. Since the library will not have excess dollars next year, a renewal of the subscription might translate into a budget cut for other collections.

Cost is still very much an issue for this library. Though we have temporarily dodged the bullet, we foresee a number of problems. For example, we have purchased a product that we may have to terminate in less than a year, depending on the availability of funds. We realize, too, that faculty who need BNA services have become accustomed to electronic access, whether directly from BNA or via LexisNexis and Westlaw. Weaning them from this usage would be challenging.

Because BNA cannot provide statistics showing usage by resource and type, the library will assess usage statistics solely based on how many hits its listing of BNA titles receive from its "online resources" Web page. Use through bookmarks, short cuts or other methods will not be counted. Though other commercial products could better track usage, they do not provide an acceptable solution. These would entail additional steps for users on-site, and the statistics provided would not create the breakdown that the library needs to adequately assess the product.

Utility. The library decided to purchase the core package, giving faculty continued access to these resources through LexisNexis and Westlaw platforms. Unfortunately the a la carte titles are not similarly available, and users have had to adjust to a new and less sophisticated search engine.

The time and research contributed by both BNA and law librarians during the development of the law school electronic program have led to improvements and furthered the goals of both sides. However a gulf between BNA and its academic customers continues to exist. While both parties would like to make BNA resources available to students and faculty, libraries cannot jeopardize other research collections to do so. And although BNA greatly benefits from the law school market, BNA has not fully factored the tight budgets of academic libraries into the pricing structure offered to the schools. Academic libraries, on the other hand, need to remember that they are not BNA's primary market and that the company cannot reasonably be expected to continue free online service.

I appreciated BNA's efforts to answer our questions and engage in discussions as we examined the decision process. Other libraries going through the same process may reach very different conclusions about whether or not to commit to the BNA package, depending on their circumstances. The willingness of academic law libraries as a group to provide feedback and to continue the dialogue with BNA will be instrumental in determining whether we are true partners in the law school program.

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NELCO Looks at the BNA Law School Program

Like many law librarians across the country, members of the New England Law Library Consortium have expended a great deal of energy adjusting to the new packaging of BNA's electronic resources, particularly since the introduction of the Law School Electronic Package in the summer of 2001 and the Expanded Program for Law Schools in March 2002. NELCO worked with BNA at various stages over the past few years in an effort to tailor an electronic resources package that would be fair and appropriate for academic law libraries — the consortium has not yet fully succeeded.

NELCO established a working partnership with BNA in 1997 when then-NELCO Executive Director Diane Klaiber tried to arrange subscription options to BNA's electronic products that were suitable for NELCO members. NELCO encountered an early stumbling block when BNA explained that it did not have the capability of using Internet protocol authentication instead of passwords. Klaiber was adamant that IP access be in place before the consortium members purchased any subscriptions, and she worked hard to represent the position of the member libraries on this requirement. This goal was ultimately achieved, and IP access is now an option for all BNA customers.

The dialogue between NELCO and BNA continued as new ideas were floated for the consortium package. As early as November

1997, BNA and NELCO discussed the idea of a "core" group of titles. BNA arranged a trial subscription for the consortium libraries, and in February 1998, BNA presented the first in a series of offers to NELCO, based upon discussions among BNA staffers, NELCO members and user feedback. The offer included three titles that served as the seeds of the "core" concept. Several NELCO members accepted this early offer.

BNA continued to seek NELCO involvement as the landscape changed. This was in keeping with Klaiber's overall goal of creating a working partnership between NELCO and information suppliers like BNA. So she was pleased to be involved in the development of a viable subscription and acceptable licensing terms.

In early 2001, BNA approached NELCO for input in developing a single core collection of electronic resources for law school customers. This led to two focus group meetings. At the first focus group at Suffolk University Law Library in Boston, BNA unveiled its proposed core collection. In response to feedback from the NELCO members at that meeting, BNA revised the core list and presented it at a subsequent focus group meeting at New York University. Thereafter, the core was established as it exists in the current program.

As far back as 1997, word had already begun to trickle down that BNA would pull at least some of its content from the Westlaw and LexisNexis academic licenses and charge separate fees to access these materials. Apparently BNA's agreements with those two companies failed to provide royalties to BNA for usage of these materials under their academic license agreements. In the spring of 2001, BNA explained to NELLCO members that the introduction of the core package was timed to coincide with an important change BNA was making that would have a huge impact on the schools: the removal of its content from the Westlaw and LexisNexis academic license agreements. Originally BNA said that this change would take place in the summer of 2001. In order to continue to provide uninterrupted online access to the core materials for their patrons, libraries would need to subscribe to the core package.

Ten NELLCO members subscribed by the Aug. 31, 2001, deadline despite serious concerns about the pricing model. However, these early subscribers were soon frustrated to learn that, although they were paying for separate BNA subscriptions, the BNA materials were still readily available under the Westlaw and LexisNexis academic licenses. BNA assured NELLCO that the material would be removed from those agreements by the end of October. Then the deadline was pushed back to the end of 2001, and only came to pass finally on June 15, 2002, when BNA implemented its Expanded Program for Law Schools. For the 10 NELLCO early subscribers, this meant that they had purchased direct access to BNA materials that were still available to them on Westlaw and LexisNexis. When I sought some remedy for this inequity, BNA's response was that it was working with the best information that it had at the time. This was a disappointment because, although we all understand that circumstances change and unforeseen events occur, it would have simply been good business for BNA to compensate those 10 libraries who acted on BNA's information to their financial detriment.

In March 2002, BNA President and CEO Paul Wojcik and BNA Publisher and Editor in Chief Gregory McCaffery sent letters to all the academic law libraries announcing the Expanded Program for Law Schools. The expanded program has received a mixed response. Acquisitions and collection development librarians have met with their BNA representatives, often many times, to try to discern exactly what the offer is and what it will cost. The pricing of the offer is based on the size of the institution ("small" encompasses those libraries with fewer than 501 full-time equivalents [fte]; "medium" libraries are those with 501–701 fte; "large" libraries have between 701 and 1000 fte; and "very large" libraries cover those with more than 1000 fte) and the packages or a la carte titles selected, offset by any credit for existing business (print discounts) that apply to any particular collection. Calculating these credits has proved to be a difficult and time-consuming task for many libraries. First, the percentage discount varies by title, requiring a careful analysis of current print holdings. Second, the figures provided by BNA to calculate these credits have often been inaccurate, as they may include credit amounts for subscriptions paid out of nonlibrary budgets, such as faculty subscriptions. The offer is further complicated by three potential platforms for access: BNA Direct,

Westlaw and LexisNexis. If the library purchases any of BNA's four package options — Core, Core Plus, Core Plus with Tax Management and BNA All — all the titles in that package will be available to the library's users on all three platforms. Should it select titles on an a la carte basis, those titles will be available only via the BNA Direct platform. While BNA's intention was to provide more points of access and greater flexibility, the results may be confusing to the end user. Finally, the expanded program still does not provide for usage statistics for the subscriber.

When the expanded program was first presented to schools last March, NELLCO spent a great deal of time evaluating it. None of the members found it an attractive offer. A group of acquisitions and collection development liaisons discussed their specific concerns at length and moved to develop a task force to look at alternatives that BNA might wish to consider. The hope was that this early input would result in a program that was better tailored to the law school library environment, and that both NELLCO and BNA would benefit from the feedback of the task force.

In April 2002, I requested a meeting between NELLCO and BNA to present our ideas and concerns. BNA staffers could not meet with us until July, and NELLCO finally scheduled a meeting at NYU with Donna Robinson, licensing and pricing manager; Charlotte Kuenen, marketing director, legal information services; and Robert Fuchs, law school program manager. At that meeting NELLCO expressed serious concerns about packaging, pricing, statistics and access, and offered some alternatives.

NELLCO maintains that BNA's approach to packaging, pricing and providing access to this material overlooks the pedagogical missions of academic law libraries and is structured according to BNA's understanding of the environments of its corporate subscribers. The consortium also contends that the pricing model that BNA has employed is not sustainable for its members. NELLCO endorses the "Statement of Current Perspective and Preferred Practices for the Selection and Purchase of Electronic Information" developed by the International Coalition of Library Consortia, available at <http://www.library.yale.edu/consortia/2001currentpractices.htm>. BNA's current model seems far from this ideal. For example, a law school in BNA's "very large" category subscribing to the BNA All package will pay just under \$100,000 per year, exclusive of any credits for existing business. A "small" law school subscribing to that same package will pay just under \$50,000. For many libraries, these figures exceed the annual cost of access to Westlaw and LexisNexis combined. As a true cost per full-time equivalent, this can amount to upwards of \$150 per fte for a small law school and nearly \$100 per fte for a very large school, depending on actual full-time employees and, again, exclusive of any print discounts. Bear in mind that the majority of this content has been available under academic licenses with Westlaw and LexisNexis and was included in the cost of access to those resources.

NELLCO is also disappointed that BNA does not meet the ICOLC "Guidelines for Statistical Measures of Usage of Web-Based Information Resources," which NELLCO endorses. See <http://>

www.library.yale.edu/consortia/2001webstats.htm for the text of the guidelines. BNA has consistently asserted that there is a high demand for its products. As NELLCO member libraries attempted to make collection development decisions about BNA's electronic resources, NELLCO sought to gather actual usage statistics. BNA directed us to Westlaw and LexisNexis as the source of statistics for BNA materials. What limited statistics the consortium was able to acquire from West and LexisNexis did not indicate high demand. BNA's continued inability or unwillingness to provide usage statistics compounds the difficulty for libraries trying to justify the purchase of electronic resources. NELLCO has repeatedly urged the company to provide subscribers with usage data.

While we were not completely successful in our attempts to sway BNA, the company made two concessions as a result of the July meeting at NYU. The first was the unbundling of the titles in the core package. Under the original plan, a library was forced to purchase the core package in order to buy any additional titles outside of the core. Now core titles can be purchased on an a la carte basis and also combined with other non-core titles. The second concession was the creation of a new law school relations manager position within BNA. Mike Bernier,

a longtime employee of BNA, currently holds that position. I hope he will play a part in restoring the goodwill that had long existed between BNA and many academic law libraries.

Having sketched NELLCO's early involvement with BNA and the basics of the new program, let me clarify NELLCO's position on BNA's current program. First, NELLCO as a consortium does not endorse or support the current BNA offer. Nor is it involved in any current or ongoing negotiations with BNA about its expanded program. NELLCO member libraries make independent purchasing decisions about BNA electronic materials and there is no current consortium agreement. As a group, NELLCO hopes that BNA will re-examine its program and make significant changes by the time the first renewal period arrives on June 15.

Librarians are fortunate to be in this profession at a time of revolutionary transition in the publishing industry. They need to be good stewards for the libraries of tomorrow. If librarians set precedents now that are unsustainable in the long run, they will have failed both their institutions and colleagues. NELLCO's goal is to continue to work with BNA and other information providers with one eye always focused on the future.