Vendor Strategies Working Group
Final Report
February 1, 2008

Members:

Steve Anderson (chair), Janice Henderson, Darcy Kirk, David Mao, Sally Wise, Kate Hagan (ex officio)

Charge:

The Vendor Strategies Working Group will review ideas about strategies for vendor relations that were generated at the Board retreat, consider other possible strategies as it deems necessary, and report back to the Board with concrete suggestions for ideas to be pursued by no later than December 31, 2007. The Working Group is not expected to develop the recommended strategies in any detail but instead just to identify what approaches appear to be worthwhile and potentially feasible. Particular topics that should be considered include (but are not limited to):

1. Possible changes to or interpretations of the Strategic Directions to clarify AALL’s approach to vendor relations
2. Possible changes to Fair Business Practice Guide to help with Price Index
3. AALL’s sponsorship policy
4. AALL’s approach to association antitrust and the necessity of limiting programs and publications
5. Ways to encourage and promote greater competition and enhanced customer service in the legal information industry,
6. Ways to improve communications with vendors and with the membership

Report:

The Working Group discussed the following issues via e-mail and then held three conference calls, one which included AALL’s attorney Lisa Stegink and her law partner Jim Gardner. The Group’s recommendations, which were unanimously decided, are found below each issue.

1. Possible changes to or interpretations of the Strategic Directions to clarify AALL’s approach to vendor relations

   A. The Working Group recommends retaining in its entirety the current Strategic Directions, without changes. The Association’s approach to vendor relations is implicit in the current section on advocacy. However,
the Group recommends that the next strategic planning task force closely examine the inclusion of vendor relations issues.

**Action: Suggested Guidance:** The Executive Board’s Strategic Directions Committee should continue to monitor the vendor relations issue as it pertains to the Strategic Directions section on advocacy.

2. **Possible changes to Fair Business Practice Guide to help with Price Index**

   A. The Working Group recommends that the Executive Board amend at its next meeting the language of “Principle 2: Disclosure” to eliminate the provisions relating to violations of contractual agreements or the revealing of proprietary information. While non-disclosure agreements are lawful and enforceable according to AALL’s attorneys, it is not necessary to include this subject in the Guide because it may provide an incentive for publishers to not reveal pricing information. The text of the principle should be changed from:

   "Principle 2: Disclosure. Publishers should provide full disclosure about their products, services, prices, and transactions insofar as allowed without violating contractual agreements or revealing proprietary information."

   To:

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

   **Action: Board Motion:** That the Executive Board amend the Fair Business Practice Guide to read as follows:

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

   B. Additionally, a member of the Working Group in advance of the next Executive Board meeting should contact those involved on the last FBPG Task Force and tell them that the Board is considering changing the wording behind Principle 2: Disclosure.

   **Action: Suggested Guidance:** A member of the Working Group in advance of the next Executive Board meeting should contact those involved on the last FBPG Task Force and tell them that the Board is considering changing the wording behind Principle 2: Disclosure. The
Working Group member will provide to the Executive Board any comments from the FBPG Task Force members about this change.

3. AALL’s sponsorship policy

A. The Working Group recommends that the Executive Board adopt at its next meeting a formal “AALL Sponsorship Policy.” The suggested policy, below, is based in part on the “Gifts and Contributions” section of the current “AALL Policy on Collaborative Activities and Joint Agreements.” It also includes several provisions listed in the Canadian Library Association Draft Gifts (Donations) and Sponsorship Policy. The suggested policy states that the Association will be authorized to refuse sponsorships from vendors who do not contribute to the Price Index or abide by the Fair Business Practices Guide, permissible procedures according to AALL’s attorneys. In addition, the new policy prohibits “direct pays” by vendors of conference activities, as requested by Kate Hagan, and includes a statement on the recognition of sponsorships. The Working Group additionally recommends that the Executive Board amend at its next meeting the current “AALL Policy on Collaborative Activities and Joint Agreements” by deleting the “Gifts and Contributions” section, which is rendered redundant with the adoption of the new “AALL Sponsorship Policy.” The suggested “AALL Sponsorship Policy” is as follows:

AALL Sponsorship Policy

Definitions: A sponsorship is a mutually beneficial exchange whereby the sponsor receives value in return for cash or goods- or services-in-kind provided to the Association.

A sponsorship with the Association requires a formal written agreement defining the terms of the sponsorship, including any recognition to be provided to the sponsor, and must be signed by an authorized member of the sponsor’s organization and by the Executive Director or designate of the Association. Sponsors shall not pay directly for hotel, meeting, meal or beverage expenses when such expenses are incurred in conjunction with Association activities.

The Association reserves the right to refuse or decline any offer of sponsorship at its absolute discretion or to negotiate with the sponsor concerning any aspect of a proposed sponsorship. The Association has the right to refuse sponsorships provided by business entities that do not contribute information to the AALL Price Index or abide by the Fair Business Practices Guide. The Executive Director or designate is responsible for determining whether a sponsorship will be solicited and/or accepted based on
an assessment of the best interests of the Association and the wishes of its members. The acceptance of sponsorships shall be consistent with the Association's Strategic Directions and financial policies.

Sponsorships do not imply endorsement of products or services by the Association. A sponsorship does not imply any exclusive arrangement with the Association. A sponsorship does not imply any grant of control or influence to the donor over the content of any Association activity, publication, position or policy.

**Action: Board Motion:** That the Executive Board delete the “Gifts and Contributions” section of the current “AALL Policy on Collaborative Activities and Joint Agreements,” which reads as follows:

**Gifts and Contributions**

1. **Definition.** Gifts and contributions may involve financial resources or other non-monetary support for an Association activity. These donations are accepted with the mutual understanding that they involve no grant of control or influence over the content of the activity to the donor.
2. **Scope.** Gifts and contributions must be consistent with the Association's Strategic Plan and financial policies.
3. **Authority.** The Executive Director may pursue and must approve gifts and contributions. The Executive Board and, in the case of support for educational efforts, the Chair of the Professional Development Committee shall be informed of all gifts and contributions. AALL will recognize all gifts and contributions in an appropriate manner.
4. **Form of Agreement.** The terms and conditions of all gifts and contributions must be confirmed with a written agreement signed by the Executive Director.

And adopt a new “AALL Sponsorship Policy” as follows:

**AALL Sponsorship Policy**

**Definitions:** A **sponsorship** is a mutually beneficial exchange whereby the sponsor receives value in return for cash or goods- or services-in-kind provided to the Association.

A sponsorship with the Association requires a formal written agreement defining the terms of the sponsorship, including any recognition to be provided to the sponsor, and must be signed by an authorized member of the sponsor's organization and by the Executive Director or designate of the Association. Sponsors shall
not pay directly for hotel, meeting, meal or beverage expenses when such expenses are incurred in conjunction with Association activities.

The Association reserves the right to refuse or decline any offer of sponsorship at its absolute discretion or to negotiate with the sponsor concerning any aspect of a proposed sponsorship. The Association has the right to refuse sponsorships provided by business entities that do not contribute information to the AALL Price Index or abide by the Fair Business Practices Guide. The Executive Director or designate is responsible for determining whether a sponsorship will be solicited and/or accepted based on an assessment of the best interests of the Association and the wishes of its members. The acceptance of sponsorships shall be consistent with the Association’s Strategic Directions and financial policies.

Sponsorships do not imply endorsement of products or services by the Association. A sponsorship does not imply any exclusive arrangement with the Association. A sponsorship does not imply any grant of control or influence to the donor over the content of any Association activity, publication, position or policy.

Action: Board Motion (Cont.): That this policy change take effect October 1, 2008.

B. The Working Group recommends that Kate Hagan continue surveying other legal and library associations on an ongoing basis for sponsorship best practices.

Action: Suggested Guidance: Kate Hagan should continue surveying other legal and library associations on an ongoing basis for sponsorship best practices and provide to the Executive Board at its July meeting a short report of her activities.

C. The Working Group recommends that the Finance & Budget Committee examine ways to reduce reliance on vendor sponsorships and increase other revenue sources.

Action: Suggested Guidance: The Finance & Budget Committee should examine ways to reduce reliance on vendor sponsorships and increase other revenue sources.

D. The Working Group recommends that the Executive Board review and possibly revise the AALL Ethical Principles at its earliest opportunity. The Principles were last reviewed in 1999.
**Action: Board Motion:** That the Executive Board charge its Policy and Procedures Task Force with reviewing the AALL Ethical Principles and recommending a process for revising them.

4. AALL’s approach to association antitrust and the necessity of limiting programs and publications

A. The Working Group recommends that Lisa Stegink speak at the next Annual Meeting and address this specific issue, perhaps as part of a panel of antitrust attorneys. Care should be taken in deciding on a question-and-answer forum. The Working Group feels strongly that this issue be discussed by the membership at an open forum.

**Action: Suggested Guidance:** The AALL President should work with the Annual Meeting Program Committee and/or headquarters staff to arrange for this panel, perhaps as part of a “hot topic” program. The President may plan for this activity with assistance from the Finance & Budget Committee in the event that additional funds are necessary.

B. While the Working Group believes that another attorney’s advice would be useful, it recommends that the Association continue using Ms. Stegink’s services. It would be impractical to have the Association seek another attorney at the present time.

**Action: Suggested Guidance:** The Executive Director should monitor the usage and costs of the current counsel and provide a report on the counsel’s activities and fees to the Executive Board at its November Meeting.

C. The Working Group recommends that the Executive Board continue to work with Lisa Stegink to explore ways in which the Association could make policy improvements, which will minimize the Association’s exposure to antitrust liability.

**Action: Suggested Guidance:** The Executive Board should continue to request advice of counsel as needs arise.

D. The Working Group recommends that the Executive Board adopt some version of the “Guidelines for Program Presentations” (Tab 20 from the Fall 2007 Board meeting). However, it does not endorse the revisions made by Lisa Stegink on December 31, 2007. The following are some possible approaches for revising the Guidelines:

- The preface should include mentions—with citations—of exactly what part of the US Code implicates antitrust issues, such as the
prohibition against boycotts. The preface should outline why members’ speech rights may be affected by Association policies. As librarians, members greatly value freedom of expression, so when this right might be restricted, the Association must have a significant reason. That reasoning should be conveyed to the membership in a clear, but non-confrontational and positive manner.

- Section #3 of the Guidelines should provide an open-ended restriction. For example, the policy should simply prohibit statements that are “libelous, slanderous or otherwise illegal.” The inclusion of more restrictions will likely be perceived by the membership as “heavy handed” or unnecessary.

- Section #4 likewise should provide an open-ended restriction. For example, the policy should simply prohibit statements in violation of applicable antitrust laws.

- Generally, the tone of the guidelines should be more positive and explanatory. It is the Group’s impression that the Guidelines need to be much less zealous in order to avoid antagonizing our members. On the one hand, members would appreciate a simple notice or reminder of what is inappropriate because they will know that the Board is acting appropriately as stewards of the association. On the other hand, any restrictions on the freedom of speech will likely be subject to a great deal of scrutiny by the membership. The Guidelines, if written in a more positive tone and without lengthy lists of prohibitions, will better strike an acceptable balance.

**Action: Suggested Guidance:** The President should immediately appoint a small “study group,” consisting of interested Board Members and the Executive Director, to redraft the Guidelines with the above suggestions in mind. In this way, the redrafted Guidelines may be introduced at the April 2008 Board Meeting. The Executive Board should adopt a revised “Guidelines for Program Presentations,” which will be positively embraced by the membership.

E. The Working Group recommends that the Executive Board incorporate language regarding antitrust liability into the following policies and documents if it adopts appropriate Guidelines mentioned in “D,” above:

- AALL Publications Policy
- AALLNET Mission, Policies and Guidelines
- AALL Discussion Forum Rules and Conditions
- SIS Publications, especially the section pertaining to SIS Newsletters
- The SIS Handbook, Section G
Additionally, the Executive Board should communicate antitrust concerns to Chapter leadership. Such communications, for example, may take place during the chapter leadership meetings at the Annual Meeting.

**Action: Suggested Guidance:** The President’s small “study group,” appointed in “D,” above, should also propose possible policy amendments in this area. If the Executive Board adopts any such amendments, the Executive Board Policy and Procedures Task Force should continue to monitor the implementation of the new policies and plan for member education about them. If the Board approves these antitrust policy changes, the SIS Council and Chapter Council Chairs should include antitrust information in their leadership training programs during the Annual Meeting.

5. Ways to encourage and promote greater competition and enhanced customer service in the legal information industry,

A. The Working Group recommends that the Executive Board adopt the two recommendations included under No. 6, below.

**Action: Suggested Guidance:** None.

B. The Working Group recommends that the Executive Board create a task force or working group charged with investigating the feasibility of developing an AALL consortium, which would operate as a “buying cooperative” for members. According to AALL’s attorneys, a consortium for discounted purchases for members is a legitimate and practical method for enhancing market competition. In practice, an AALL consortium may operate similarly to the New England Law Library Consortium. The recommended task force should consider ways in which the Association could implement a consortium, including the development of a business plan, the delineation of the planned consortium’s market position vis-à-vis NELLCO and MALLCO, the evaluation of the “best practices” of other consortia, the creation of a policy for the consortium, the ways in which the consortium could work in conjunction with a Vendor Relations Representative, the hiring of staff (if necessary), the procurement of legal guidance on the creation of such an entity. There likely will be some significant start-up expenditures involved with this initiative, a factor that the Finance & Budget Committee should take into account during its budget planning process.

**Action: Board Motion:** That the Executive Board create a five-member “Consortium Review Task Force” to investigate the feasibility of developing an AALL consortium, which would operate as a “buying cooperative” for members. The Task Force is charged with evaluating
ways in which the Association could implement a consortium by considering the following steps:

- The development of a business plan
- The delineation of the planned consortium’s market position vis-à-vis NELLCO and MALLCO
- The evaluation of the “best practices” of other consortia
- The creation of a policy for the consortium
- The ways in which the consortium could work in conjunction with a Vendor Relations Representative
- The hiring of staff (if necessary)
- The procurement of legal guidance on the creation of such an entity
- The planned expenditures for such a project

The Task Force may review additional subjects and opportunities not mentioned above. The Task Force shall prepare a final report, including all recommendations by the Spring 2009 Executive Board Meeting, with interim reports at the July 2008 and November 2008 Board Meetings.

C. The Working Group recommends that AALL, perhaps under the guidance of the suggested Vendor Relations Consultant or Representative, renew its efforts in promoting Project Counter. This non-profit collaborative advocates adoption of uniform standards concerning the recording and reporting of online usage data. Additionally, CRIV and the TS-SIS should continue to foster awareness about Project Counter.

**Action: Suggested Guidance:** The Executive Board’s Liaison to CRIV and the SIS Council should recommend to these groups that they continue to promote Project Counter. If a Vendor Relations Consultant or Representative is appointed this year, the Board should request a status report at the earliest opportunity on the Consultant’s or Representative’s progress in promoting Project Counter.

D. Additionally, the Working Group recommends that the Executive Board and CRIV promote competition and enhanced customer service by advocating the following strategies to the membership.

- CRIV should consider communicating to the membership about competition and customer service in the following ways:
  
  I. Hold educational sessions discussing the advantages and disadvantages of libraries’ agreeing to non-disclosure agreements. The Association cannot take a position on this issue because of advice by counsel. However, it may hold information sessions for members.
II. Publish information regarding new products, product bundles and related pricing. According to counsel, the Association may advise members on the purchase of information items by recommending that a particular price or bundle be in the best interest of the consumer.

III. Continue education on negotiation strategies.

IV. Compile a best practices guide to illustrate how individual libraries can promote competition.

- The Executive Board and Executive Director, perhaps under the guidance of the suggested Vendor Relations Consultant or Representative, should consider communicating to vendors about competition and customer service in the following ways:

V. Meet with publishers to advise them regarding the products, product bundles and related pricing that members would like to have in the marketplace.

VI. Send thank you letters to those vendors that provide information. The Association could also be more direct in thanking vendors that abide by Association guidelines, such as placing such information on AALLNET.

VII. Encourage AALL Committees and SIS’s to support open source products, free online resources, public domain titles, etc.

VIII. Encourage vendors to use “inside sales representatives,” in addition to maintaining individual account representatives. In this way, library customers can have questions immediately answered if an account representative is unavailable.

**Action: Suggested Guidance:** The Executive Board’s Liaison to CRIV should recommend to CRIV that they continue to educate the membership using the suggestions listed above. The Executive Board’s Strategic Directions Committee, the AALL President, and the Executive Director should continue to improve vendor communications by undertaking the suggestions listed above. In the event that a Vendor Relations Consultant or Representative is appointed this year, the Board should request a status report at the earliest opportunity on the Consultant’s or Representative’s progress in promoting the communications suggested above.

6. Ways to improve communications with vendors and with the membership
A. The Working Group recommends that the Association hold in Spring 2008 a vendor colloquium on the subjects of scholarly communication and the economics of publishing. This meeting will help to foster considerate communications between the Association and the publishing community. The Group also understands that there is currently funding set aside for this meeting.

Action: Suggested Guidance: The President and Executive Director have already begun planning this meeting. The Group suggests that the Board receive continued progress reports about the planned activities, including any structured agenda and list of invitees.

B. Although there is unanimous agreement by Working Group members that a “Vendor Relations Representative” is necessary to improve AALL’s information policy advocacy with publishers, there are concerns that significant questions regarding the Representative’s job duties remain. For that reason, the Group thought it best to “ease into” the creation of this position, by creating a “trial version” of the Representative in the form of a “Consultant” for a temporary period of time who can advise the Board on how such a position might work to benefit the Association in practice. Thus, the Consultant should embody many of the characteristics the Executive Board had been considering in the appointment of a Representative: renowned stature in the profession; ability to work well with both members and publishers; and a record of innovation and contribution to the profession. If the Consultant or the Executive Board later finds too many problems surrounding the permanent creation of the Vendor Relations Representative position, the Board can end further discussions about the Representative position.

The Working Group recommends that CRIV continue to be the entity primarily responsible for enhancing the relationship between individual members and vendors. By contrast, the institution of a Vendor Relations Consultant or Vendor Relations Representative should be aimed at improving the relationship between the Association and vendors.

Group members noted significant potential benefits stemming from the creation of a Vendor Relations Representative, patterned after the Washington Affairs Representative position. Such advantages include:

- The capability of the Association to have a “point person” for vendor issues, especially as it relates to consortium building, colloquium management, educational activities for both members and vendors, especially related to pricing, and general advice regarding the Price Index and Fair Business Practices Guide.
The ability to divest the Executive Director, the Executive Board and potentially CRIV, of some responsibilities of maintaining vendor relationships. The Representative position would provide needed stability to the vendor-Association relationship, which the Board and staff cannot always provide because of turnover.

The capability of the Association to have an “expert” in the field, one that is able to discuss vendor issues at a “high” philosophical and information policy level.

The ability to have an advocate of AALL’s information policy platform aggressively promote it among publishers and other vendors.

The capability of the Association to move “forward” on this issue.

The capability of recommending vendor relations policies and procedures to the Board.

The capability of enhancing communication between the Association and vendors through a more time-intensive collaborative approach.

Knowledge of all library types, a factor that strengthens relations with vendors (Board members and AALL staff do not always have such broad knowledge).

The Working Group, however, also considered some problems related to the position, thus necessitating the initial consultancy period. Such difficulties include the following:

- A significant learning curve for any individual selected for the position.
- There may be difficulties in finding an appropriate candidate for the position.
- The inability of the membership to distinguish who it should be contacting for what vendor issue (Board, CRIV, Executive Director, or Representative).
- The position description, especially as it outlines various responsibilities among Association stakeholders, may be complex.
- The inability to articulate right now how much freedom and discretion the Representative would have in discussing issues or policies with vendors.
- The reliance on a tenured faculty member or a retired librarian for this position.

The Working Group believes that the immediate creation of the Consultant position would allow a “Representative-type” individual to begin addressing some of these serious concerns. At the same time, however, the Consultant could begin to leverage some of the benefits that such a position might create. The Group discussed with AALL’s attorneys if this position would cause any antitrust concerns. While counsel still should
review the Consultant and Representative positions, there were few concerns that this position would raise antitrust concerns for the Association. However, a law firm librarian in this position could potentially expose the firm to antitrust concerns. For that reason, the Board should seek advice of counsel to ensure that problems can be addressed appropriately.

The Working Group recommends that the Executive Board approve and fund a new position of Vendor Relations Consultant for a period of time not to exceed the November 2008 Executive Board Meeting. The individual selected for this position would be appointed soon after the April 2008 Board Meeting so that he or she could attend the 2008 Annual Meeting and hold an open meeting for the membership and speak individually with members, as well. The Consultant should draft a final report, to be provided to the membership, for the November Board meeting.

**Action: Board Motion:** That the Executive Board create the contractual position of “Vendor Relations Consultant” to report to the Board at its November 2008 meeting whether or not the Vendor Relations Representative position is a practical way to foster the Association’s information policy platform among publishers and otherwise improve AALL’s relationship with the vendor community. The Consultant’s written report should contain recommendations regarding the following points:

- How best to structure a future “Vendor Relations Representative” position so that it will serve the needs of the membership.
- How this position will work in conjunction with the Executive Board, AALL Headquarters staff, including the Executive Director, and CRIV.
- How this position—specifically—can work on activities such as: consortium building, colloquium planning and management, educational programs for both members and vendors, building appropriate relationships with vendors, publishing articles advocating information policy issues pertaining to the publishing industry, advocating for improved customer service and increased competition in the publishing industry
- A position description.
- Initial policy and procedures in the vendor relations area.

At the Board’s discretion, the Consultant may be asked to provide the report in person at the November 2008 meeting, the costs for which would be reimbursed to the Consultant. The Consultant’s report shall be available to members. The Consultant shall make every effort to meet with AALL members at the 2008 Annual Meeting and also at one or two local chapter meetings in his or her immediate region. The Consultant shall provide the Executive Board with an interim progress report by
September 1, 2008 and a final report before the November 2008 Executive Board Meeting. The Finance & Budget Committee should identify and recommend to the Board an appropriate funding source to pay the consultant $6000 for research and production of the report, plus travel expenses to present the report in person at the November Executive Board meeting.

The AALL President, in consultation with the Executive Committee, shall select the Consultant at the earliest opportunity. Consideration in the appointment process should be given to the following characteristics: renowned stature in the profession; ability to work well with both members and publishers; and a record of innovation and contribution to the profession.

**Action: Suggested Guidance:** The Executive Director or AALL President should ask Association counsel to review the Consultant’s position to ensure legality before February 29, 2008.

**Action: Suggested Guidance:** At its February 2008 meeting, the Finance & Budget Committee should provide to the Executive Board a recommendation on how to pay for this position.