

Contents

Editor's Corner	2
From the Chair	2
Reflections on the Antitrust Implications of Expressive Boycotts	3
CRIV Advocacy Issues Update	7
Publishers' Librarian Relations Efforts	10
Acquisitions Commentary	12

Robert Myers, CRIV Chair
Case Western Reserve University
School of Law
robert.myers@case.edu

Shaun Esposito, CRIV Vice Chair
University of Arizona College of Law Library
shaun.esposito@law.arizona.edu

The CRIV Sheet

Mary Jenkins, Editor
Hamilton County Law Library
mjenkins@cms.hamilton-co.org

Ed Edmonds, Assistant Editor
Notre Dame Law School, Kresge Library
edmonds.7@nd.edu

Mitchell Johnson, Assistant Editor
Cook County Law Library
Mitchell.Johnson@cookcountyil.gov

CRIV Page and Tools Subcommittee

Shaun Esposito, Chair
University of Arizona College of Law Library
Shaun.esposito@law.arizona.edu

Brandi Ledferd
Robert Myers

Education Subcommittee

Robert Myers, Chair
Case Western Reserve University
Law School Library
robert.myers@case.edu

Michelle Cosby
Liz Reppe
Carol Suhre

Member Advocacy Subcommittee

Robert Myers, Chair
Case Western Reserve University
Law School Library
robert.myers@case.edu

Brandi Ledferd
Carol Suhre

New Product Award Subcommittee

Michelle Cosby, Chair
North Carolina Central University
School of Law
mcosby@ncsu.edu

Liz Reppe

Vendor Roundtable, AALL Annual Meeting

Shaun Esposito, Moderator, 2011

CRIV Web Site

www.aallnet.org/committee/criv

The CRIV Sheet

Editor's Corner

This issue of *The CRIV Sheet* offers an invited article by Hillary Greene, associate professor at the University of Connecticut School of Law, who presented "AALL, Boycotts and Antitrust: Is There a Nexus?" at the 2010 AALL Annual Meeting. We are also pleased to present a summary of CRIV's advocacy efforts on behalf of AALL members. In that article, CRIV Chair Rob Myers details each issue brought to CRIV for assistance. Trina Robinson of

George Washington University Law Library describes a concern about invoices and invites your comment. I offer the reader an overview of legal publishers' formal efforts at librarian relations. As always, CRIV invites submissions to *The CRIV Sheet*. Many librarians have solved problems locally and have forged productive relationships with vendors. We would like to share your experiences and suggestions.

Robert Myers Case Western Reserve University School of Law

From the Chair

I hope you enjoy this issue of *The CRIV Sheet*. We have several articles that I think you will find interesting and educational. We also have an update on the advocacy items CRIV has worked on during the past year.

With the AALL Annual Meeting just a couple of months away, I'd like to take this opportunity to tell you about some of the activities CRIV has planned for the event. Understanding that nearly everyone has registered by this point, if you find yourself available at the time of any of these scheduled events, I encourage you to attend.

This year, CRIV is presenting two educational programs and sponsoring a third program at the Annual Meeting. The programs carry the common themes of electronic resources and license agreements. The programs are presented as a trilogy with each program building off the previous program. Each program, however, also stands on its own and does not require attendance at the prior one for clarity. The first program is titled "Best Practices for Evaluating a New Electronic Resource" and will be held on Sunday, July 24, from 1:30 to 2:45 p.m. The second program, "Anatomy of a License Agreement," was proposed by CRIV members Michael Bernier, Liz Reppe, and Michelle Cosby and is scheduled for Monday, July 25, from 2:15 to 3:30 p.m. The third program, "Getting to Yes for Your Library: Negotiating Vendor Contracts in Your Favor,"

proposed by Jane Baugh and Connie Smith and co-sponsored by the Private Law Libraries Special Interest Section and CRIV, will be held on Tuesday, July 26, from 9 to 10:30 a.m.

The Annual Meeting CRIV Vendor Roundtable will be held on Monday, July 25, from 12-1:15 p.m. Librarian attendance at the roundtable has been increasing over the years. We highly encourage you to attend as this is a great opportunity to discuss issues with vendor executives and vendor library relations staff.

The CRIV annual meeting for incoming and outgoing members will be held on Saturday, July 23, from 3 to 4:30 p.m. The meeting is open to the general membership. CRIV members will also speak at the leadership training sessions for committee and special interest section chairs as well as the Academic Law Libraries Special Interest Section acquisitions meeting. And, as always, CRIV will have its table in the Exhibit Hall and at the CONELL Marketplace. CRIV looks forward to meeting with our colleagues at the Annual Meeting.

In other matters, CRIV has been working to update CRIV Tools, available online at www.aallnet.org/committee/criv/resources/tools. We finally have an updated list of vendor contact information that provides links to both the main website for each vendor and its customer service page. We are working on other updates to the tools and will have them posted soon.

Reflections on the Antitrust Implications of Expressive Boycotts

Editor's Note:

This article summarizes and heavily excerpts Hillary Greene's "Antitrust Censorship of Economic Protest," 59 *Duke Law Journal* 1037 (2010), which the author presented at the June 2010 AALL Annual Meeting Session, "AALL, Boycotts and Antitrust: Is There a Nexus?" This summary piece excerpts several key arguments and source materials. The complete journal article is available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1593184.

Introduction

Antitrust law accepts the competitive marketplace, its operation, and its outcomes as an ideal. Society need not and does not. Although antitrust law is not in the business of evaluating, for example, the "fairness" of prices, society can, and frequently does, properly concern itself with such issues. When dissatisfaction results, it may manifest itself in boycotts, which are typically undertaken by buyers.

The boycotts that this article addresses are broadly characterized as "expressive" by many courts and commentators because the speech associated with them is broadly political yet also economically self-interested. Unfortunately, both the First Amendment and antitrust legal regimes have proven inept at addressing the phenomenon of expressive boycotts that lies at their intersection. The increasing centrality of intellectual property to individuals' professional lives and to society's welfare as a whole arguably has contributed to their increasing frequency and the increasing complexity of the issues such boycotts introduce.

This article argues that antitrust considerations should not censor the normative discourse of expressive boycotts. Towards that end, it provides a rudimentary overview regarding how antitrust law impedes this speech, argues why it should not, and offers a framework that accommodates both First Amendment and antitrust values.

Antitrust Monopolization of the First Amendment

Boycotts are collective refusals to deal, undertaken by market participants to influence the decisions of other market participants. The potentially relevant antitrust stricture for boycotts is the *Sherman Act's* § 1, which prohibits any "contract, combination . . . or conspiracy, in restraint of trade." Though, as a practical matter, only *unreasonable* restraints are prohibited. Conduct subject to *per se* condemnation is that deemed inherently pernicious owing to the presence of anticompetitive effects and lack of redeeming pro-competitive effects. An agreement undertaken solely to interfere with the marketplace as

a pricing mechanism, referred to in *US v. Socony-Vacuum Oil* as "the central nervous system of the economy," receives *per se* condemnation.

Expressive boycotts that implicate pricing issues pose unique challenges because they can be vehicles for both the exchange of ideas and economic coercion. Not surprisingly, then, such boycotts must be considered against the complex backdrop of the First Amendment, the *Sherman Antitrust Act*, and a host of judicial rulings. Unfortunately, despite the potential for flexibility inherent in both areas of law, neither legal regime exhibits sufficient flexibility regarding expressive boycotts. Rather, the Supreme Court has resorted to either ignoring the complex nature of the speech involved or engaging in an overly simplistic bifurcation of political and economic speech. This section briefly explores the common law evolution beginning with the antitrust law applied to economic boycotts that lack any *bona fide* speech interest and then proceeds to boycotts characterized by various combinations of both economic and noneconomic interests.

Boycotts characterized as so-called "naked price fixing" are collusive schemes to influence price. Antitrust analysis of such activities is, therefore, typically characterized by the absence of any discussion of speech or the First Amendment. Speech is merely the mechanism for effectuating the illegal scheme. Because there is no expressive component to the speech at issue, it is implicitly categorized as nonspeech, and the boycott can be condemned under the antitrust laws with no harm to First Amendment values.

At the opposite end of the boycott spectrum from naked price fixing are cases involving "politically motivated but economically tooled boycott[s]" such as *Missouri v. Nat'l Org. for Women, Inc.* That case involved a boycott of convention-related services in Missouri whose legislature "had not ratified the proposed Equal Rights Amendment." The court held that the boycotters' First Amendment right to petition the government effectively immunized them from potential antitrust liability. The ruling extensively

addressed what the court stated that it did *not* base its decision upon, namely, the noneconomic nature of the boycott. Implicitly, then, the speech was deemed political not only because it sought to influence government policy but also ostensibly because the boycotters lacked economic self-interest.

The next major case involving an antitrust challenge to an expressive boycott, *NAACP v. Claiborne Hardware Co.*, involved a boycott of Claiborne County, Mississippi, which was launched after “particularized demands for racial equality and integration” were not met. While the Supreme Court’s ruling did not address the antitrust claim, which the Mississippi Supreme Court had dismissed, its First Amendment discussion figures prominently in the Court’s subsequent antitrust jurisprudence.

Based on any reasonable measure, the Claiborne County boycott sought to affirm the constitutional rights and basic human dignities of its African-American citizens. After disclaiming the existence of any economic motivation on the part of the boycotters, the Court categorized the expressive conduct as political speech, thereby providing the boycotters the strongest First Amendment protection. Nonetheless, the Supreme Court’s claim that no economic self-interest was involved was inaccurate. Perhaps the Court recognized that introducing such complexity regarding the boycotters’ motivations would diminish First Amendment protections in such cases.

Alternatively, perhaps the court’s characterization regarding motivation conveyed its determination that the boycott arose from a political objective, notwithstanding any economic self-interest. Ultimately, the fact that even a widely celebrated political boycott still implicated economic interest on some level underscores the limitations of binary categorization (political or economic speech) for expressive boycotts. This distinction between categories of speech is particularly elusive when assessing “mixed-motive” boycotts.

One particular danger attendant to erroneous categorization of speech is that insufficient First Amendment protection may result and, in turn, the speech may be rendered unduly vulnerable to the economic efficiency-oriented antitrust laws. The prevailing Supreme Court precedent regarding expressive boycotts, *FTC v. Superior Court Trial Lawyers Ass’n*, illustrates such a problematic outcome. Lawyers who regularly represented indigent defendants engaged in a well-publicized boycott by withholding their services until the District of Columbia increased their compensation rates.

A divided court condemned the boycott as *per se* illegal, and it specifically declined to find any protected speech owing to the boycotters’ economic self-interest.

The majority’s ruling is notable for its categorization of what does and does not constitute protectable speech. The Supreme Court constrained itself not only by focusing solely on political speech but also by narrowly defining “political.” In effect, the economic self-interest on the part of the boycotters disqualified their expressive conduct from treatment as political speech. The court’s dicta went still further, stating that even if the economic boycott was “uniquely expressive” *per se*, condemnation would still be warranted. This reflected the court’s estimation that the speech interests inherent in the conduct at issue are trumped not only by the government’s substantive interest in antitrust regulation but also by the government’s administrative efficiency interests in antitrust regulation.

Recognizing Boycotts as a Unique Form of Speech

Expressive boycotts combine elements of speech and conduct. As Frederick Schauer has observed more generally, certain expressive conduct—that which is public, involves issues of social policy (in addition to possible economic gain) that transcend the specific transactions at issue, and takes the form of normative debate—may constitute speech warranting some level of First Amendment protection.

Before considering the value—perhaps even the unique value—of the expressive boycotts at issue as a form of speech, it is important to dispel several potential red herrings. First, while political speech is the paradigmatic example of speech that the First Amendment strives to protect, that category is not coextensive with the bounds of speech to which First Amendment protections apply. Protected speech need not be political in either content or context (namely, government petitioning). Second, the mere presence of a commercial purpose or self-interested economic motivation need not diminish or obviate speech protections. Third, protected speech “extends to more than the use of language,” and it may take the form of expressive conduct. Fourth, the fact that alternative constitutionally protected avenues exist for boycotters to protest does not render the contested speech unprotected by the First Amendment.

Ironically, the same features of expressive boycotts that potentially render them suspect competitively may contribute to their speech value: expression of group solidarity (collective action) and expression of sacrifice (refusal to deal). Justice Blackmun’s minority

opinion in *Superior Court Trial Lawyers*, effectively a dissent for instant purposes, emphasized these features when he rejected the majority's application of *per se* condemnation.

Solidarity

While expressive action, such as a nonpurchase, can be undertaken by a single individual, within the context of boycotts it is almost invariably a joint effort. Both the strong First Amendment protection accorded to joint speech and its underlying rationale have clear implications for joint expressive conduct. Though outside the boycott context, the court in *Citizens Against Rent Control v. City of Berkeley* "acknowledged the importance of freedom of association in guaranteeing the right of people to make their voices heard on public issues: 'Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.'"

Sacrifice

By their very nature, boycotts often poignantly convey the notion of sacrifice and, as a consequence, signal an intensity of commitment. As the dissent in *Superior Court Trial Lawyers* noted, "A boycott, like a hunger strike, conveys an emotional message that is absent in a letter to the editor, a conversation with the mayor, or even a protest march." Despite the general recognition of the significance of sacrifice within a boycott context, the equally important significance of a nonboycott by protestors has gone unrecognized. Under many circumstances, when protestors continue business as usual with the target of their criticism, they may blunt (if not entirely undermine) the force of their objections or at least how they are perceived.

Overcoming Antitrust Obstruction to Expressive Boycotts

Once a court unnecessarily restricts itself to an all-or-nothing type of analysis, as it has for the boycott cases at issue, as the *Schauer* Court said, "the difficulties of 'all' [immunizing speech] may lead courts to choose 'nothing' [*per se* condemnation]." This is particularly true when the protection of free speech is ostensibly in tension with other important values. The Supreme Court characterized the *Sherman Act* in *United States v. Topco Assocs.*, as "the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms."

Outside the antitrust context, the court has developed a more refined legal approach—reflected in so-called *O'Brien* balancing or intermediate scrutiny—that recognizes both the value of expressive conduct and the value of legitimate regulations thereto despite an

impact on speech. Similarly, this article recommends an intermediate path by which the law could strike an appropriate balance between First Amendment and competition values despite their inherent incommensurability. When confronted with an antitrust challenge to an expressive boycott, the courts would engage in more nuanced determinations regarding the existence of protected speech interests and, when speech interests are present, apply a modified antitrust analysis.

Speech Interest

Without the simplistic equation of the First Amendment with petitioning (speech immunized) or the absence of any First Amendment solicitude with speech characterized by economic-interest (speech potentially subject to *per se* condemnation), it is critical to determine whether a *bona fide* speech interest is at stake. While the factual and legal determinations may be challenging, First Amendment precedent (beyond the antitrust context) can offer some guidance, as can Justice Blackmun's minority opinion in *Superior Court Trial Lawyers*.

As a first step, it is important to identify which general factors tend to strongly favor versus militate against finding a speech interest. Factors warranting consideration include the public discourse associated with both pre-boycott and boycott efforts, the significance or triviality of the boycotters' economics interests, and whether the market conditions render the boycott conducive to successful collusion. With regard to this last factor, in the absence of marketplace characteristics favoring successful collusion, greater credence should be accorded to claims that the boycott's purpose is noneconomic. Though, "the converse of this reasoning does not hold with equal force."

It is also important to note that the presence of a *bona fide* speech interest increases the complexity of the preliminary, but critical, determination regarding conspiracy. In contrast to more conventional antitrust settings, conspiracy law's simplifying assumption of purely economic actors may be particularly unsound for expressive boycotts. Assessing actions against self-interest is difficult when the boycotters' interests are more complex than narrow economic gain.

Competitive Harm

Just as the existence of a speech interest should be discerned from the facts rather than from a mechanical categorization, so too competitive harm should be assessed by evaluating the facts rather than by resorting to *per se* rules when expressive boycotts are at issue. As the dissent in *Superior Court* aptly noted, *per se* analysis could result in the condemnation of expressive boycotts that contribute

to public discourse but inflict no competitive harm. Meaningful recognition of a speech interest in expressive boycotts would not only require application of a rule of reason analysis to situations previously condemned as *per se* violations, but it would also necessitate *modifying* the rule of reason.

Changes to the rule of reason include reforming the assessment of competitive harm and crafting a safety zone. With regard to the former, demonstration of an actual economic harm, without more, is insufficient to establish antitrust liability. Boycotts whose efficacy derives primarily from persuasion rather than economic coercion ought not to run afoul of the antitrust laws and certainly not on a *per se* basis. Fortunately, the existing antitrust framework provides a starting point for such inquiry. Market share often functions as a proxy for anticompetitive effects and could be used to determine, with certain limitations, whether or not the source of certain anticompetitive effects is persuasion or economic coercion. For example, boycotts with a market share beneath a particular level, a safety zone, would be deemed presumptively insufficient to result in antitrust liability even when a market effect, though of unknown provenance, is established. Similarly, if there is a competitive effect, again of unknown provenance, and the boycotters enjoy above a certain percentage of the relevant antitrust market, however induced, then the market effect would be presumed to result from direct coercion. Obvious, but difficult, questions that follow include, what are substantively appropriate thresholds? and, how would they be established? In the absence of an actual market effect, the rule of reason analysis, replete with its inherent complexity, would ensue. Extremely involved inquiries of this type are routinely undertaken in antitrust matters to avoid unnecessarily condemning procompetitive conduct. First Amendment rights warrant, at the least, comparable solicitude.

Conclusion

Expressive boycotts combine speech with economic coercion or, more specifically, the potential for such coercion and present a difficult challenge to current antitrust and First Amendment law. *Superior Court Trial Lawyers*, critical precedent on this issue, effectively rejects the argument that economically self-interested boycotters can have speech interests, apart from government petitioning, warranting any First Amendment protection. Ironically, it is oftentimes precisely these parties who are most knowledgeable about and committed to the social and community issues at stake. The unique features of a boycott in engendering social discourse coupled with the frequent absence of any underlying market power renders condemnation, or even discouragement, of these efforts on antitrust grounds dubious from an economic perspective, as well as unconstitutional.

Bibliography

Phillip E. Areeda and Herbert Hovenkamp, 1B *Antitrust Law: An Analysis of Antitrust Principles and their Application* (3d ed. 2006)

James D. Hurwitz, "Abuse of Governmental Processes, the First Amendment, and the Boundaries of Noerr," 74 *Georgetown Law Journal* 65 (1985)

Kay P. Kindred, "When First Amendment Values and Competition Policy Collide: Resolving the Dilemma of Mixed-Motive Boycotts," 34 *Arizona Law Review* 709 (1992)

Frederick Schauer, "The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Saliency," 117 *Harvard Law Review* 1765 (2004)

Rodney A. Smolla, 1 *Smolla and Nimmer on Freedom of Speech* (2009)

Keith Werhan, "The O'Briening of Free Speech Methodology," 19 *Arizona State Law Journal* 635 (1987)

CRIV Advocacy Issues Update: August 2010–February 2011

Date: August 2010

Issue: Several law librarians complained on the law-lib online discussion list that they did not understand the reason behind so many Thomson West and LexisNexis titles undergoing format changes (from loose-leaf or hardbound with pocket part to an annual “pamphlet” in the case of Thomson West and from bound volume to loose-leaf in the case of LexisNexis). Another librarian commented that publishers should do a better job of disclosing exactly what has been updated in a revised edition, supplement, or loose-leaf update.

Action: CRIV contacted and conducted interviews with Susan Slisz, vice president of print products at LexisNexis, and Toni Kasparek, senior director of print and advanced media at Thomson Reuters Legal.

Resolution: The responses to the interviews were published in the February 2011 issue of *The CRIV Sheet* (Volume 33, no. 2).

Date: October 2010

Issue: A law librarian reported to CRIV that William S. Hein & Co., Inc., as subscription agent servicing RIA, had been advised by RIA that beginning with 2010 supplements, RIA would no longer offer standing orders to its publications for the “first supplement only.” In other words, if you subscribed to an RIA title, you must take and pay for all supplements issued during the year and can no longer subscribe to just the first supplement issued per year.

Action: CRIV contacted William S. Hein & Co., Inc., and was given the name of Lucy Fore as its contact at RIA. CRIV contact Fore, who did not know the rationale behind the change but promised to take it up the management chain.

Resolution: According to Fore, this change in subscription policy was the result of a new software program implemented at RIA in which a subscriber is either on subscription for the entire year or not on subscription at all. The software does not have the capability to support first-supplement-only subscribers.

Date: November 2010

Issue: A law librarian requested CRIV’s assistance with an issue relating to the 2010-11 bound volume of CCH’s *U.S. Tax Cases*. Her library received the bound volume on October 1, 2010. On November 17, 2010, the library received *Report No. 43*. The report included an updated decision beginning at ¶50,418

but those pages were already in the bound volume. The librarian contacted CCH customer service and was told that a revised 2010-11 bound volume would not be issued. The librarian contacted CRIV in the hopes we might be able to convince CCH to publish a revised 2010-11 bound volume.

Action: CRIV contacted Linda Lev-Dunton, director of segment management at Wolters Kluwer, who had already seen the original post on law-lib and had sent the information to the CCH editorial team.

Resolution: CCH editorial “responded that this is an unfortunate situation, but one that is not unprecedented. Courts periodically reissue opinions well after publishers have printed cases in bound volumes. If the holding of the case changes, our policy is to reprint the updated case as part of its current *USTC* cases. If the opinion is not substantially changed, our policy is to update the case electronically and reissue loose-leaf pages if the pages are still contained in the *Standard Federal Tax Reporter USTC* volume. In this particular instance, the holding of the case was not changed. As a result, there are no plans to reprint the 2010-11 *USTC* bound volume at this time. The opinion has been updated electronically and in loose-leaf for users of the *USTC*, and the updated opinion notes that the case was updated on October 16, 2010.”

Date: December 2010

Issue: A law librarian posted a complaint to law-lib regarding the newly published sixth edition of *Shepard’s Acts and Cases by Popular Names*. The thrust of the complaint was that Illinois recodified its laws in 1992 and the *Illinois Revised Statutes* became the *Illinois Compiled Statutes*. When Shepard’s released its fifth edition of *Shepard’s Acts and Cases by Popular Names* in 1999, it only included the pre-1992 *Illinois Revised Statutes* citations for statutes predating 1992 and did not include citations to the newer *Illinois Compiled Statutes*. The librarian complained to Shepard’s back in 1999 but was told Shepard’s would not correct the error at that time. When the librarian received the revised sixth edition, he was shocked to see that it continued to contain only the pre-1992 *Illinois Revised Statutes* citations for statutes predating 1992 and urged subscribers to request a corrected set from LexisNexis.

Action: While the librarian pursued the issue to much success using his own contacts at LexisNexis, CRIV discussed the issue during its monthly conference call and decided to ask Cindy Spohr at LexisNexis to look into the issue on behalf of the membership.

Resolution: Spohr subsequently emailed the following to CRIV: “LexisNexis agrees it is critical for the *Shepard’s Acts & Cases by Popular Names* publication to enable researchers to easily identify the location of the Illinois acts in the current *ILCS*. As a result, Lexis will update the publication to provide Ill Rev Stat/*ILCS* cross-references to assist researchers in locating the acts in the current version of the code. This will allow the publication to continue to account for both the changes in popular act names that occurred when the code was revised and the fact that current case law continues to include historical references to Ill Rev Stat. Upon completion of the updates, Lexis will reproduce the volumes and distribute them to our customers. We will be able to provide more information about the ship date of the updated volumes once the full scope of the required editorial effort has been determined.”

Date: December 2010

Issue: A law librarian posted a complaint to law-lib regarding the index and finding aids to the *Code of Federal Regulations (CFR)*, which LexisNexis publishes annually as part of a subscription to the *United States Code Service*. The librarian’s complaint focused on the fact that the Lexis *CFR Index* is nearly an exact reprint of the Government Printing Office (GPO) *CFR Index* with the addition of one table. While the librarian indicated he had been able to return the volume for credit in past years, he wondered why he would be credited \$128.42 for the Lexis edition when the GPO volume cost only \$68. He also questioned the need to have a *CFR Index* sold and shelved as part of *USCS*.

Action: While the librarian pursued the *CFR Index* issue using his own contacts at LexisNexis with the support of CRIV, CRIV brought the issue to the attention of Cindy Spohr at LexisNexis citing section 2.3(d) [practices to avoid] of the *AALL Guide to Fair Business Practices for Legal Publishers*.

Resolution: LexisNexis sent CRIV the following official response: “*The United States Code Service (USCS) Index and Finding Aids to the Code of Federal Regulations* is a component of the *USCS* set and shares the same ISBN; it does not have a separate ISBN. The *Index and Finding Aids to the Code of Federal Regulations* is part of the full-service subscription to *USCS* and is not marketed as a stand-alone publication. The *USCS* service does not simply reproduce the GPO index, but adds several enhancements:

“The *USCS Index and Finding Aids to the Code of Federal Regulations* utilizes GPO data and expands upon it to create a tool for legal researchers of federal statutes and regulations. A full summary of the data contained in the book is provided following the table of contents. These summaries are written by

LexisNexis and help the user to understand how to best use the books.

“The *USCS Index and Finding Aids to the Code of Federal Regulations* also provides an additional table (Table 2) that is created by the LexisNexis indexing staff based on compiled *Federal Register* and *CFR* documents. It contains a comparison between *CFR* Part/Section to its authority in the *USCS*. This can be found beginning on page 901.

“Regarding the client issue brought to our attention regarding cost, the price of the *USCS Index and Finding Aids to the Code of Federal Regulations*, as a component of the larger *USCS* set, is \$48. Despite the additional enhancements, this price is \$20 less than the GPO version.”

Date: December 2010 – January 2011

Issue: Numerous complaints began surfacing on law-lib regarding the transition of Law Journal Press’ (LJP) loose-leaf publications to either a print and online combination subscription or an online-only subscription. The option to subscribe to loose-leaf titles in print only was no longer offered. Customers who did nothing were automatically enrolled in the print and online combination subscriptions at an approximately 25 percent higher cost than the previous year’s print-only subscription. In addition, customers could no longer pay by the update piece and instead had to pay for an annual subscription. Many members were unaware of these changes and were taken by surprise when invoices arrived with prices much higher than normal.

Action: CRIV contacted Larry Selby, vice president of e-products at ALM (parent of LJP), and asked LJP to respond to the following questions citing section 3.1 [customer consent] to the *AALL Guide to Fair Business Practices for Legal Publishers*.

Resolution: See Selby’s abbreviated responses below each question:

1. How is Law Journal Press (LJP) converting to online? Does LJP have a new pricing/ invoicing model?

Over the next eight months, all of Law Journal Press’ publications will be digitized and made available online. We are timing the launch of the online products to coincide with the release of the next updating release for each product. As of the end of 2010, 42 LJP products were available on www.lawjournalpress.com with the remainder of the product line (approximately 100 products) to be made available online in the first two quarters of 2011.

As each book goes online, we are altering the subscription model for the book. Whereas in the past the subscriber was invoiced and asked to pay for each

individual update, the subscriber will now be paying for an annual service with all updates during the annual period provided as part of the annual service price. The annual charges will run on a rolling 12-month basis from the renewal date, not on a calendar-year basis.

2. Is it still possible to subscribe only to the print version of a title without having to subscribe to the online version?

We are encouraging the conversion to online but understand that libraries serve a variety of users. Subscribers will be offered two options once a book is available online: (1) online-only format and (2) an online/print bundle priced slightly higher than the online-only option. If subscribers are not in a position to handle online access in their facilities though, they should contact one of our account representatives (ljpsales@lawjournalpress.com, 877-807-8076) to discuss their needs. We are more than willing to try to accommodate the needs of all customers.

3. Is it still possible to be invoiced by the loose-leaf update release rather than an annual yearly subscription?

No, we are moving to annual subscription invoicing once products are converted to online.

4. Why was the decision made to switch to annual yearly subscriptions instead of billing by the release?

The move was driven by a number of factors: (1) the fact that we plan to increasingly add updating material throughout the year apart from the updating releases; (2) the practical difficulties in charging upon the release date once material is being provided online; and (3) the comments from users during our research phase that they often preferred the pricing predictability of annual pricing.

5. Some librarians have expressed concern that their invoices are inaccurate (i.e., very high). Are you aware of any inaccurate invoicing issues? If so, what actions are being taken to remedy this?

Yes, we are aware of an inaccurate invoicing issue. We suffered from a key invoicing error just as we launched some of our online products in November, which caused some confusion for our customers. We apologize to our customer base for that error and hope that they will bear with us as we rectify the mistake. In November, as a result of a data input error, we invoiced subscribers to seven products (*Directors and Officers Liability; A Practical Guide to OSHA; Product Liability; Reinsurance Law; Communications Law; Environmental Enforcement; and Federal False Claims Act*) at a higher-than-planned price. Upon discovering the error, we quickly prepared and mailed out new invoices with the correct charges to subscribers during the week of December 6.

Subsequently, Selby issued the following clarification, which CRIV posted to law-lib:

“Over the next eight months, all of Law Journal Press’ publications will be digitized and made available online. Law Journal Press is timing the launch of the online products to coincide with the release of the next updating release for each product. While Law Journal Press is encouraging the conversion to online, it certainly understands that libraries serve a variety of users and may not have the ability to handle online at this time. Subscribers will be offered two options once a book is available online: (1) online-only format and (2) an online/print bundle priced slightly higher than the online-only option. Please note, however, that if subscribers are not in a position to handle online access in their facilities at this time, they should contact one of Law Journal Press’ account representatives to discuss their needs. Law Journal Press is willing to work with all subscribers through this transition and can provide a discount on the annual renewal price to those subscribers requiring a print-only subscription.”

Date: February 2011

Issue: A law-librarian complained on law-lib regarding CCH’s decision to provide the updated Winter 2011 edition of the *Internal Revenue Code* deskbook only as an e-book in Adobe Digital Editions software or as a PDF supplement to the print edition also available only electronically. The previous print edition did not include the *Tax Relief Act of 2010*. The librarian reasoned that attorneys prefer an up-to-date deskbook, not an e-book or pdf supplement. She further commented that librarians should not have to print and distribute multiple copies of supplements.

Action: CRIV referred the complaint to Linda Lev-Dunton at Wolters Kluwer who had already seen the original complaint on law-lib and was seeking an alternative solution.

Resolution: Shortly thereafter, Lev-Dunton posted the following to law-lib on behalf of CCH: “As you know, CCH is providing a completely updated edition of the *Internal Revenue Code* Winter 2011 in a downloadable e-book free of charge to anyone that purchased the previous print or e-book. There is also a special supplement posted at www.cchgroup.com/2011code, which includes all *Code* sections added, amended, or repealed by the 2010 *Tax Relief Act* and other year-end legislation. This has turned out to be a great solution for many of our customers, yet not a perfect solution for all. Therefore, CCH is providing at no charge a printed supplement to the *Internal Revenue Code*. If you would like to order a supplement(s), please send an email with your company name, address, account number, and quantity required to cchcustomerservice@wolterskluwer.com. The *Internal Revenue Code* Winter 2011 supplement, including all 2010 legislation, will begin shipping on February 25, 2011.”

Publishers' Librarian Relations Efforts

The largest legal publishers have some level of coordination of librarian relations. In a few cases, there is a dedicated team that connects directly with law librarians to offer training, introduce new products, engage professionally, and represent law librarians' concerns and interests to the vendor's management. Well-publicized lay-offs of librarian relations staff at LexisNexis and Thomson Reuters in 2010 left me wondering one year out what those publishers and others are focusing on now and what customers should expect in terms of communication and service besides less "face-time," as Greg Lambert predicted on "3 Geeks and a Law Blog" last year (www.geeklawblog.com/2010/01/half-of-westlaws-library-relations-team.html).

This article serves as an overview of some major publishers' librarian relations efforts and as a follow-up to some extent on the cutbacks of 2010. It is not an opinion piece on the quality or utility of librarian relations divisions. For more information about vendors' sizes and areas of concentration, please see Kendall Svengalis' excellent *Legal Information Buyer's Guide & Reference Manual*.

I contacted five publishers for comment. The following people responded on behalf of their companies: Shane Marmion, director, HeinOnline; Anne Ellis, senior director, librarian relations, Thomson West; Linda Lev-Dunton, director of segment management, Wolters Kluwer Law and Business; Cindy Spohr, team lead of the librarian relations group, LexisNexis; and Michael Bernier, director of library relations BNA (and CRIV member). Quotes used in this article are attributable to these representatives.

Clearly, not all legal information publishers have a dedicated librarian relations division. While William S. Hein & Co., Inc. (Hein) does not, it reports that 98 percent of its customer base is librarians, and resultantly all of its employees "are empowered to act on behalf of librarians' needs." Linda Lev-Dunton is the only staff member specifically responsible for librarian relations at Wolters Kluwer Law and Business (Wolters Kluwer). Clearly, "segment management" is far broader than the library market alone. Michael Bernier is the BNA staffer assigned to library relations. BNA has had a library relations program since 1994. LexisNexis kicked off its library relations efforts in 1993, currently in the form of a group of nine librarian relations consultants headed by Cindy Spohr. Anne Ellis leads a team of seven librarian relations managers at Thomson West.

LexisNexis, Thomson West, and BNA all require a library science degree of their librarian relations staff, noting as well the value of law library experience or a JD. Many AALL members will acknowledge the professional contributions that some of these vendor representatives and their predecessors have made to the Association.

Readers may be interested to know where librarian relations fits within the organizational structure. As one might assume, since librarian relations is a customer-facing entity, it is typically aligned with sales. At Wolters Kluwer, it reports to strategic marketing. Thomson West's librarian relations group reports to sales and account management. BNA's library relations director reports through a director in BNA's legal division. (As an aside: Since library relations is not a profit center, it seems likely that has played a role in reductions in resources, human and otherwise, much as it has for many libraries.)

Although none of these publishers (except Hein) was able to report on the size of any portion of its market, several commented on librarians as essential to product selection for their parent organizations. Bernier remarks that "librarians have the skills, education, and expertise to make collection development decisions, to assess quality and reliability of publications, and work to best meet the needs of their users," a sentiment echoed by others from whom I sought comment. Ellis notes that "librarians shape the features and functionality that get built into our products." Thomson West finds that librarians have "a strong voice in selecting products" and an invaluable knowledge of products. Spohr comments on the "many spheres of influence [that librarians have] within their organizations" and on product development at LexisNexis.

I asked what librarians can expect of librarian relations teams. The responses vary significantly depending on the type and size of vendor and its history of commitment to librarian relations. As I noted earlier, Hein sees its entire staff—from shipping to customer service to marketing—as engaged in librarian relations. LexisNexis library relations consultants and Thomson West's librarian relations managers offer educational programs, communications conduits, and professional engagement. LexisNexis has a website (www.law.lexisnexis.com/infopro) intended specifically for librarians. Both companies increasingly offer online training materials. Anne Ellis reports that Thomson West has responded to law librarians' requests by offering more in-house training.

Librarians often comment on the confusion and frustration of problem resolution with vendors. I asked respondents for clarification about the “dividing line” between customer support and librarian relations. Where a dedicated librarian relations staff is in place, it typically is not the first line of support. Librarians are encouraged to contact customer support about those questions that require an immediate answer, for example, billing or other account issues and login problems. Librarian relations staff can mediate the resolution of longer-term or more complex problems. As Spohr puts it, “We hope that if a librarian has a problem with one of our products or practices that he or she would contact the Librarian Relations Group [first], rather than canceling products or posting on online discussion lists.” All of the representatives with whom I spoke, except Wolters Kluwer, expressly asked that librarians work with librarian relations or other staff to resolve difficult issues. Ellis remarks, “our goal is to make life easier for our customers.” Marmion of Hein suggests that librarians “bring as much background information about the issue as possible so we can help resolve the problem in a timely and efficient manner.”

Librarian relations teams are also typically involved in product development and rollout activities. Anne Ellis offers the example of the launch of WestlawNext, noting that New Product Development and Librarian Relations worked closely to tap the expertise of librarians in the development and introduction of the product. Similarly, the LexisNexis Librarian Relations Group, as reported by Spohr, took the lead in providing librarians with information about and access to the new lexis.com[®] interface. And, of course, librarian relations staff are engaged in library association activity.

As reported elsewhere (see posts and comments on *Law Librarian Blog* and *3 Geeks and a Law Blog*, for instance), some law librarians, particularly in the law firm setting, find themselves less involved in parent

organizations’ legal information product selection and contract negotiation, in part due to publisher contact with other decision makers in the firm. This topic is a matter of significant concern and was discussed at the AALL Vendor Colloquium at length.

Asked about the future of publishers’ librarian relations efforts, respondents identify a continued role in training and support, in librarian issues advocacy to management, and in the communication of new product rollouts. As Bernier expresses it, “Sometimes only a librarian can best understand an issue,” so the librarian relations staff is integral to account management. While the commitment to librarian relations in terms of dedicated resources appears reduced in some cases (but not at all in others), the economic challenges have also generated more online communications and support channels. Financial woes have also underscored the importance of the law librarian’s role in knowledgeable product selection, efficient use of information resources, good problem-solving, and clear communication between publisher and library. And by “law librarian,” I refer to both the librarian-customer and the vendors’ law librarian relations staff.

Responses to this article are welcome. What do you see as the future of publishers’ librarian relations? How have you worked productively with your publishers’ librarian relations contacts? What challenges or successes have you experienced while resolving issues with customer service and librarian relations staff? As the current editor of *The CRIV Sheet*, here is my plug for article submissions: CRIV welcomes articles on “any aspect of law library/vendor relations, the legal publishing or legal information industry, the practices of specific legal publishers/vendors, law library acquisitions, or guides and directories to facilitate the work of acquisitions librarians.” See the full *CRIV Sheet* Editorial Policy at www.aallnet.org/about/policy_criv.asp.

Acquisitions Commentary

Editor's note: This article was previously published in 36 Technical Services Law Librarian, No. 2, December 2010, and is reprinted with permission. CRIV shares author Trina Robinson's interest in your experience with invoicing and welcomes your comments and requests for assistance.

As an acquisitions librarian, I occasionally need to locate invoices from publishers or vendors for annual renewals despite placing a standing order for a publication, which is supposed to eliminate this problem. That said, traditionally little time has been spent on this activity. However, this year, I spent noticeably more time requesting publishers or vendors to please invoice me for various publications. Unfortunately, I made some of these discoveries only after the subscriptions lapsed and we no longer had electronic access or the print issues stopped coming. With print products, it is usually detected quickly by those who claim missing issues, but with electronic products the discovery is most likely made when someone tries to use the product and cannot access it.

I often wonder why some salespeople for these products work so hard on the sale but spend significantly less time seeing that the subscription and invoices continue as they should and even less time checking whether we are satisfied with the product. They do inquire about satisfaction when a

subscription is cancelled, but often not before then. Of course there are exceptions to this statement, and I by no means wish to imply that none of our vendors or publishers solicit feedback for its products and services. I have had a fair share of inquiries, and I am sure students and faculty have as well. I certainly understand that once the order is placed, someone else within the company handles the delivery and distribution of that subscription and the invoicing, but it seems to me it is the company's responsibility to ensure invoices are sent in a timely manner. If the company prefers it be the responsibility of the subscriber, then it should not accept standing orders. For the few publishers who do not accept standing orders, I place codes in our records to notify me when I should request the next invoice or publication. Those companies who accept standing orders, and then let them slip through the cracks, complicate matters unnecessarily.

If there are other acquisitions personnel noticing an increase in time and effort spent requesting invoices that should come automatically, please be so kind as to let me know via email (trrobinson@law.gwu.edu). I have spoken to a few other librarians with similar experiences, and I am curious to know if this might be a trend, simply an off year, or maybe the result of shifting workforces and responsibilities for all involved (publishers, vendors, and librarians). Thank you for your input.