

## **A Brief History**

The original *AALL Guide to Fair Business Practices for Legal Publishers* was approved by the *AALL Executive Board* in November 2002. It was a response to the rescission of the *Federal Trade Commission's Guides for the Law Book Industry*, and the FTC's explicit encouragement that AALL or other interested groups develop standards to address member concerns.

The AALL Guide describes standards for the business practices of publishers that most directly affect law librarians, attorneys, procurement officers, and other consumers of legal information. It consists of five general principles, each of which is accompanied by sub-principles and examples. It sets forth principled business practices that will promote fair and appropriate treatment for customers.

The AALL Guide was revised in 2008, 2012, and again in 2018, incorporating additional examples of practices that are consistent with the AALL Guide and practices to avoid, and responding to new developments in legal publishing and the marketplace. AALL is under no illusion that the simple promulgation of a guide will solve all problems associated with the business practices of legal publishers. However, AALL believes that a good faith effort on the part of the legal publishing community to implement the provisions of the AALL Guide, coupled with consistent reference to the principles by customers will facilitate effective business relationships and minimize problems.

The AALL Guide represents the cumulative efforts of many dedicated AALL members, from the original Special Committee (Frank Houdek, Chair, Kathy Carlson, Chris Graesser, Kay Todd and Michelle Wu), the 2005-2006 Task Force (Kay Todd, Chair, Rita Dermody, Kamla King Hedges, and Richard Vaughan), and the 2011-2012 Task Force (Kay Todd, Chair, Michael Bernier, Kathy Coon, Margaret Maes, Jean Mattimoe, and Adeen Postar). Member input throughout these examinations and revisions has ensured that the Guide reflects contemporary practices. The 2017-2018 Task Force (Elizabeth Outler, Chair, Stephanie Edwards, Mike Hughes, Ian Kipnes, Patricia Petroccione, and Elisabeth Umpleby) wishes to thank AALL President, Greg Lambert, AALL Past President, Ron Wheeler, and members of the Executive Board for their support of this revision.

## Introduction

1. The American Association of Law Libraries Guide to Fair Business Practices for Legal Publishers ("AALL Guide") is premised on the belief that good customer service and positive customer relations benefit legal publishers as well as customers. Equally fundamental is the understanding that the relationship between publishers and customers must be built on mutual respect and trust.
2. The AALL Guide provides guidelines for legal publishers doing business with librarians, attorneys, procurement officers, and other consumers of legal information, and covers the full range of their interactions, from advertising and solicitation to purchases and customer support. The best practices identified by the AALL Guide are designed to facilitate effective and productive relationships.
3. By following the provisions of the AALL Guide, legal publishers can significantly contribute to effective self-regulation in the public interest and help establish the AALL Guide as the accepted standard in the industry. AALL urges legal publishers to comply with the AALL Guide and to implement the requisite internal procedures and infrastructure to support compliance.
4. The AALL Guide offers practical guidelines, with examples of practices either to follow or to avoid that are intended to help explain these guidelines. The AALL Guide does not explicitly cover publishers' internal operations, understanding that the publisher is in the best position to implement the guidelines in a manner suitable to its business plan. The AALL Guide is designed to allow legal publishers to take advantage of evolving technology and to foster innovation while adhering to fair business practices.
5. The AALL Guide uses the term "should" in recognition that this is a voluntary code. All provisions are strongly recommended for implementation by the legal publishing community. Law librarians and other consumers of legal information are encouraged to regard the AALL Guide as a minimum basis for fair business practices by legal publishers and to reference these principles in their interactions with publishers.
6. The legal information and publishing environment is rapidly evolving. The AALL Guide will be modified to keep pace with developing technology, new business models and practices, and the needs of customers. AALL is committed to reviewing the AALL Guide regularly and updating it as needed.
7. The AALL Guide is evidence of AALL's longstanding interest in vendor relations, together with the [AALL Principles and Practices for Licensing Electronic Resources](#), the [AALL Vendor Relations Policy](#), the work of the AALL Vendor Liaison, and the Committee on Relations with Information Vendors (CRIV). CRIV is charged with fostering a positive working relationship between librarians and information vendors. Activities of the Committee include advocacy on behalf of AALL members, communication with information vendors, developing educational programs, and keeping the AALL membership abreast of new developments in legal publishing by way of [The CRIV Blog](#) and [The CRIV Sheet](#) newsletter. The committee has also developed an online toolkit known as [CRIV Tools](#), containing checklists, sample letters, customer service tips, an online [Request for Assistance form](#), and

publications (including the *AALL Guide to Fair Practices* and the *Procurement Toolkit and Code of Best Practices for Licensing Electronic Resources*).

## **Definitions**

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

### **beta testing**

The final stage in the testing of a new electronic product before its commercial release, conducted by testers other than its developers.

### **communication**

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

### **customer**

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

### **customer service**

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

### **electronic product**

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

### **fair dealing**

The conduct of business with full disclosure.

### **MARC record**

A record designed to describe a bibliographic entity or communicate authority or holdings information, and formatted with MARC tags and codes following national standards and conventions. MARC stands for Machine Readable Cataloging.

### **material information**

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

### **product**

A tangible item, not limited to a print publication, that is distributed commercially for use or consumption.

### **publisher**

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

**standing order**

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

**supplementation**

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

**transaction**

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

## **Principles for Fair Business Practices of Legal Publishers**

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

### **Principle 1: Truthful and Accurate Communication.**

Publishers of print and electronic products should engage in truthful and accurate communication with their customers or potential customers.

### **Principle 2: Disclosure.**

Publishers should provide full disclosure about their products, services, retail prices, and terms in order to enable customers to make informed purchasing decisions.

### **Principle 3: Fair Dealing.**

Publishers should engage in fair dealings with their customers in all aspects of the business relationship.

### **Principle 4: Customer Satisfaction.**

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

### **Principle 5: Product Quality.**

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

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

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

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

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

**1.1(a) PRACTICE TO FOLLOW: Upon request from a potential or existing customer, a publisher provides substantiation of all claims about the product and identifies the nature of the relationship if names of other companies or people are quoted.**

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

**1.1(b) PRACTICE TO FOLLOW: A statement extolling the quality of a product, used in an advertisement, should indicate if a relationship exists between the source of the statement and the publisher of the product.**

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

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

**1.2 PRACTICE TO FOLLOW: A publisher clearly and conspicuously displays "NOT AN INVOICE" in any offer or encouragement to purchase a product that contains pricing, so as not to mislead the customer.**

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

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

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

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

**1.3 CUSTOMER CONTACTS.** Publishers should make every effort to communicate "Who to Contact for What" in all correspondence with customers.

**1.3 PRACTICE TO FOLLOW: A publisher assigns one main contact to the customer for all purchases and questions about products.**

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

**2.1 CLEAR AND ACCURATE INFORMATION.** All information about products, services, prices, and transactions provided by publishers to customers should be accurate, clear and conspicuous, so as not to mislead the customer.

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

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

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

**2.1 PRACTICE TO FOLLOW 3: Emails requesting price information receive a prompt response.**

## 2.2 ESSENTIAL PRODUCT INFORMATION.

Prior to confirming a purchase, publishers should provide in writing all information necessary for a customer to make an informed decision about products and services, including but not limited to:

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

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

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

2.2(c) For electronic products, the browser or other technical requirements for receiving or accessing the product and any known system incompatibilities

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

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

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

2.2(e) Expected publication date of a new edition, a substantial revision, or an anticipated format change, if known or expected to be within the next six months

**2.2(e) PRACTICE TO FOLLOW: A publisher notifies customers that a looseleaf volume will be replaced with an annual soft cover book.**

2.2(f) Complete physical description, including whether publication is a looseleaf or bound volume, contains a CD, DVD, or other electronic supplemental materials, or has a companion website

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

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

**2.2(g) PRACTICE TO FOLLOW 2: Upon request by an existing or prospective customer, a publisher provides supplementation costs for the current and at least the two preceding years.**

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

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

2.2(i) Information on supplementation should include:

- i. Expected extent, content, and format of supplementation
- ii. Expected frequency of supplementation or schedule of any and all such anticipated releases
- iii. Whether cost of supplementation is included in the flat rate subscription or separately charged by shipment or some other arrangement
- iv. When possible, historic data and projected annual percentage of any increase in the cost of supplementation for the product

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

2.3(a) Price and/or license fee to be charged with detailed line items

2.3(b) Any offered terms or limitations, including special offers

2.3(c) Expected tax, shipping and handling charges

2.3(d) Any known related material that will be shipped automatically as part of a subscription or standing order and that will incur an additional cost

2.3(e) Billing information and payment terms

2.3(f) Return, refund and cancellation policies

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

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

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

**2.5 TRIAL SUBSCRIPTIONS.** Advertisements that include offers of trial subscriptions should specify: (a) the trial terms; (b) what constitutes acceptance of these terms; and (c) any costs and other obligations if the customer accepts the terms. If a trial subscription is offered under a negative option plan, the offer must clearly explain what a customer must do to accept or cancel the subscription.

**Principle 3: FAIR DEALING.** Publishers should engage in fair dealings with their customers in all aspects of the business relationship.

**3.1 CUSTOMER CONSENT.** Publishers should obtain the customer's consent prior to making a shipment or initiating a transaction, unless such shipment is part of a standing order or subscription to which the customer has previously consented. Publishers should seek customer consent prior to shipping materials that fundamentally alter, enhance, or augment a product or subscription. Unsolicited merchandise may be disposed of without permission, without an attempt to return, and without payment, pursuant to federal statute (39 U.S.C. § 3009). In all cases, publishers should offer a simple procedure for returning products and canceling subscriptions.

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

**3.1 PRACTICE TO AVOID 2: Without consent, a publisher ships or makes available to a customer unsolicited print or digital material and then later sends an invoice for the title.**

**3.1 PRACTICE TO AVOID 3: A publisher requires that a customer pay postage when returning an unsolicited product.**

**3.1 PRACTICE TO FOLLOW: Publisher provides annual notice of all existing standing orders and subscriptions; alternatively, publisher provides online account management platform that lists and allows for management and cancellation of all active standing orders and subscriptions.**

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

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

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

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

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

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

3.1(d) Where a substantial change in the nature, format, or scope of a product results in a significant cost increase, publishers should give customers advance notice before shipping the product, whether or not the customer has a standing order.

**3.1(d) PRACTICE TO FOLLOW: A publisher provides adequate advance notice of a new edition or recompilation that will incur a significant price increase.**

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

3.2(a) Publishers should make every effort to limit the scope of confidentiality restrictions.

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

3.2(c) Publishers should always provide an opportunity for their customers to negotiate contract terms.

**3.2(c) PRACTICE TO AVOID:** A publisher uses "click-on" or any other passive means to create an agreement that does not provide customers a fair opportunity to negotiate.

3.2(d) Publishers should adhere to the [AALL Principles and Practices For Licensing Electronic Resources](#).

**3.2(d) PRACTICE TO FOLLOW: Review the AALL Principles and Practices for Licensing Electronic Resources.**

**3.3 BILLING AND INVOICES.** Publishers should provide clear, correct, and timely invoices to customers.

**3.3 PRACTICE TO AVOID 1: A publisher's invoice uses such an abbreviated title for the item being billed that it is difficult for customers to identify the item. [See 2.1]**

**3.3 PRACTICE TO AVOID 2: Publisher applies a credit to an outstanding invoice but will not provide an updated invoice showing the applied credit.**

**3.3 PRACTICE TO FOLLOW: Publisher provides corrected invoices promptly upon request.**

3.3(b) Publishers should issue credit memos promptly and request instruction from customers about how to process (e.g., whether to apply to outstanding charges or issue a refund).

**3.3(b) PRACTICE TO AVOID 1: Publisher fails to notify the customer when a credit is issued.**

**3.3(b) PRACTICE TO AVOID 2: Publisher sends notices of existing credits but will not issue a credit memo.**

3.3(c) Publishers should apply payments to the charges referenced in the payment.

**3.3(c) PRACTICE TO AVOID: Publisher applies payment to a newer invoice, when the customer had referenced an earlier invoice on the payment instrument; earlier invoice becomes overdue, and Publisher sends overdue notices.**

3.3(d) Publishers should send invoices and all related communications to the contact person(s) designated by the customer.

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

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

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

**3.4(c) PRACTICE TO AVOID: A publisher provides a subscription invoice that does not clearly indicate to the customer what is included in the subscription.**

3.4(d) Customers should be provided with filing/replacement instructions that are sufficiently detailed to ensure accurate updating.

3.4(e) Publishers should clearly and conspicuously display information on scope and coverage of each print and electronic product.

**3.4(e) PRACTICE TO FOLLOW: The electronic version of a state statute indicates the last legislative session for which changes are included.**

**3.5 UNSOLICITED COMMUNICATION.** Publishers should respect reasonable requests by the customer regarding methods of contact such as telemarketing or email advertisements.

**3.5 PRACTICE TO FOLLOW: A publisher honors the request of a customer to be removed from a telemarketing list, even if the**

**publisher contracts with a third party for telemarketing services.**

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

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

3.6(b) Publishers should bill in a timely manner and send periodic overdue notices when payment is not received.

**3.6(b) PRACTICE TO AVOID: A publisher sends the first notice of an overdue invoice more than a year after the due date of the original invoice.**

**3.7 FORTHCOMING EDITION OR SUBSTANTIAL REVISION.** Publishers should advise customers about a forthcoming edition or substantial revision of a publication when customers place an order for the publication or make an inquiry that may lead to its purchase if: (1) it is known that the new edition or revision is scheduled for publication within the next six months, and (2) the pricing structure is such that the customer will need to make a comparable investment during the year to maintain a current subscription or title.

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

**3.8 CHANGE IN PUBLICATION STATUS.** When a product is sold to another publisher or assigned to a different division as part of a reorganization, and that change will affect the customer, customers should be informed of the changes related to publications to which they subscribe.

**3.8 PRACTICE TO FOLLOW: Publishers selling or divesting a publication or series of publications should provide subscribers with a list of titles affected.**

**3.8 PRACTICE TO AVOID: Publishers selling or divesting of a publication or series of publications do not notify customers, or make readily available, information on the status of their accounts and the names and contact information of their current account representative.**

3.8(a) Customers should be notified of any changes that affect billing, subscription terms, content, access, and contact information.

3.8(b) Customers should be provided information on the new account representative or customer contact.

**Principle 4: CUSTOMER SATISFACTION.** Publishers should seek to ensure customer satisfaction by providing a complete customer service team, training customer service employees, honoring representations, answering questions, and resolving complaints and disputes in a timely and responsive manner.

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

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

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

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

4.2(a) Customer Service Provided by Telephone

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

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

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

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

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

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

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

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

**4.3 CUSTOMER SERVICE EMPLOYEES.** Publishers should ensure that ALL employees who have contact with customers are trained, knowledgeable, and adequately prepared to resolve problems.

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

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

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

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

**4.3(b)(i) PRACTICE TO FOLLOW: The customer service representative should be able to provide a direct contact within the publishing company's billing system to assist the customer.**

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

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

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

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

4.3(d) Customers should be provided with a direct channel for making complaints or commendations, not just a generic address, email address, or 800 phone number.

**4.4 TIMELINESS.** Customer service employees should respond to all inquiries and follow up on unresolved issues in a timely manner, except for circumstances under 4.4(c).

4.4(a) Customer service employees should promptly acknowledge the receipt of all inquiries.

4.4(b) Customer service employees should ensure that their promises to resolve problems are fulfilled in a timely manner.

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

**Principle 5: PRODUCT QUALITY.** Publishers should create products that are capable of supporting and withstanding reasonable use by customers.

**5.1 PRINT FORMAT.** All print material should have wide enough margins and a binding that makes it easy to reproduce, by photocopying or scanning.

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

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

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

**5.3 SOFTCOVER MATERIALS.**

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

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

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

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

#### **5.4 LOOSE-LEAF MATERIALS.**

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

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

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

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

#### **5.5 ELECTRONIC PUBLICATIONS.**

**5.5 PRACTICE TO FOLLOW: Publishers should adhere to the [AALL Principles and Practices For Licensing Electronic Resources](#).**

**5.5 PRACTICE TO FOLLOW: Electronic publications should comply with the American with Disabilities Act by supporting assistive software in a manner consistent with best practice guidelines and industry standards.**

**5.5 PRACTICE TO FOLLOW: Electronic publications should be compatible with major browsers and operating systems.**

5.5(a) Electronic products should not be placed into the market until tested by a group of users that are representative of their actual anticipated customers, including those users with assisted devices

5.5(b) Instructions and documentation should be easy to understand and easily accessible

5.5(c) Statements describing the scope of information provided by electronic products should be included in the documentation for the products, and updated on a regular basis.

**5.5(c) PRACTICE TO FOLLOW: Product maintenance and upgrades should be implemented in a manner that does not compromise product accessibility.**

5.5(d) Products should clearly indicate their expiration date so that the publisher can be contacted if an update has not been received to try to ensure the ongoing availability of the resource.

5.5(e) Information as to the date and/or the number of the release should be included within the electronic text.

5.5(f) Implementation of products should include installation support, appropriate training, and continued support in the use of the electronic materials.

**5.6 MICROFORMS.** Microform producers should follow the standards established by the National Archives and Records Administration (“NARA”) in 36 C.F.R. Part 1238.10 and 36 C.F.R. Part 1238.14.

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

**5.7 NON-PRINT MATERIALS.** Audio, video, and digital materials should be playable on equipment that meets industry standards.

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

**5.8 MARC RECORDS.** MARC records included with products should include basic requirements for discoverability, a stable distribution method, and a notification schedule of updates.

**5.8 PRACTICE TO FOLLOW: FTP should be the preferred method for delivering MARC records.**

**5.9 REPLACEMENTS.**

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

5.9(b) The policies and process for requesting replacements should be widely publicized to customers.

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

## **AALL PRINCIPLES AND PRACTICES FOR LICENSING ELECTRONIC RESOURCES**

### **Background**

In 1997, the American Association of Law Libraries (AALL) joined with five other library associations to draft principles for licensing electronic resources. These principles had the dual purpose of guiding libraries in their negotiations for access to electronic resources and informing vendors and publishers of digital information about the licensing issues important in the library context. In 2004, the Principles were revised by an AALL Special Committee appointed by President Carol Avery Nicholson in 2002. The revised Principles reflected both the rapidly shifting landscape of digital information and evolving user needs as a result of enhanced technologies. In 2011, AALL President Darcy Kirk appointed a Library Procurement Process Improvements Task Force. This Task Force was directed, in part, to “Update the *Principles for Licensing Electronic Resources*, paying particular attention to new developments in vendor licensing practices and to providing model language for basic licensing provisions.” At that time, the title was changed to *Procurement Toolkit and Code of Best Practices for Licensing Electronic Resources*, and several appendices were added.

In 2017, another AALL Special Committee was appointed by President Ron Wheeler to review and update both the *Procurement Toolkit and Code of Best Practices for Licensing Electronic Resources* and the *AALL Guide to Fair Business Practices for Legal Publishers*. The Special Committee determined, based on input from the membership, that the document should include an emphasis on accessibility for disabled users. Most AALL members are licensing electronic resources in academic, public, government, and employment contexts where adherence to the minimum standards provided by the Americans with Disabilities Act (and possible additional state accessibility law) is required. In addition, the Committee recommended changing the title to make it shorter and easier to reference and abbreviate.

In the years since the initial drafting of this document, the process of licensing electronic resources has become more uniform. Model license agreements and sample clauses developed by several library consortia have gained widespread acceptance and adoption by libraries and information vendors alike. Where once there was little commonality from one vendor’s license agreement to the next, today many are strikingly similar. However, licensing electronic resources for libraries remains a complex and legalistic process.

These principles provide guidance to both librarians and vendors engaged in the licensing process. In addition to the principles, the following materials, intended as a toolkit for anyone involved in library procurement, are appended here:

- Appendix A - CHECKLIST FOR LICENSING ELECTRONIC RESOURCES
- Appendix B - RESOURCES FOR LICENSING TERMS AND DEFINITIONS
- Appendix C - RESOURCES FOR SAMPLE CLAUSES AND MODEL LICENSE AGREEMENTS
- Appendix D - BIBLIOGRAPHY - LICENSING AND PROCUREMENT OF ELECTRONIC RESOURCES
- Appendix E - BIBLIOGRAPHY - ACCESSIBILITY OF ELECTRONIC RESOURCES
- Appendix F - PROCUREMENT PROCESS CHECKLIST FOR LAW LIBRARIES

## **Introduction**

A license is an agreement ***negotiated*** by the parties involved. Once the parties have agreed to terms, the license is a legal and binding contract between them. A contract is "[A]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." [Black's Law Dictionary, 7th edition, 1999.]

License agreements regulating the use of electronic resources govern the relationship between the licensee (the library or user of the content) and the licensor (publisher, vendor or aggregator of the content). In a typical situation, the licensor will present its standard license agreement to the licensee. This is just the first step in the license negotiation process. Because both parties will be bound by the terms therein, ***each party*** should review the license carefully and ***be prepared to negotiate*** in good faith to reach a satisfactory agreement. The terms of the final agreement should be committed to writing and neither party should rely on verbal agreements or commitments. If the parties cannot agree on key issues in writing, the license should not be signed.

In the area of licensing electronic resources, failure on the part of the licensee to read and understand the terms of the agreement may result in such unintended consequences as:

- the loss of certain rights to uses of the resource that would otherwise be allowed under the law (for example, in the United States, such uses as fair use, interlibrary loan, and other library and educational uses);
- obligations to implement restrictions that are unduly burdensome or create legal risk for the institution;
- sudden termination of the contract due to inappropriate use by a member of the user community;
- unexpected cancellation or renewal notification requirements or automatic renewals and fee increases;
- access restrictions that cannot be supported by the licensee's technical or administrative infrastructure.

Given the obligations that a contract creates for an institution and the possible liability associated with not meeting those obligations, in many institutions the authority to sign contracts resides in a specific office or officer within the institution (e.g., the purchasing department, legal counsel's or vice president's office, or the library director's office). In some institutions, a library staff member may be delegated authority to sign license agreements. Library staff will often be responsible for initial review and negotiation of the material terms of the license because they have the most knowledge of the user community and the resource. Library staff involved in license negotiations should be well informed of the anticipated uses that are essential to their library's user community (for example, interlibrary loan, downloading, or data mining).

**The following Principles, along with the appended toolkit materials, are meant to provide guidance to library staff working with others in their own institution and with third-party licensors to reach agreements that respect the rights and obligations of both parties. Library staff engaged in the procurement process should also be familiar with the [AALL Guide to Fair Business Practices for Legal](#)**

[Publishers](#), and the [Committee on Relations with Information Vendors \(CRIV\) tools](#). These publications are available at [AALLNET.org](http://AALLNET.org).

## **CODE OF BEST PRACTICES FOR LICENSING ELECTRONIC RESOURCES**

### **Section I – Licensing Preparedness**

**Description:** Academic, law firm, and government libraries are all involved in licensing electronic resources. It is the expectation of all parties that negotiations throughout the process will be conducted openly and in good faith.

**Practice #1:** If negotiation, licensing, and procurement are carried out by a department outside the library, representatives for the library should work for clear communication between the departments so that the library's needs are understood and well-represented.

**Practice #2:** A license is a contractual agreement between the licensor and the licensee for purchase or use of an information resource by the licensee's authorized users. Parties to a license agreement should be familiar with the elements of a legal contract.

**Practice #3:** All parties should maintain good faith in negotiating a license. It is important that the process be carried out as openly as possible to achieve fairness and to promote best practices. A confidentiality or nondisclosure agreement should not be a prerequisite to a license agreement.

#### **Practice Comments:**

- a) The licensor should make constituents aware of the existence of previously purchased products to avoid duplication or redundancy of access within the same institution.

**Practice #4:** It is expected that vendors will be open and transparent in their pricing structure, and will provide accurate and relevant pricing information.

#### **Section Comments:**

- a) A non-disclosure agreement is a contract provision that requires the licensee and/or licensor to refrain from making public certain information, such as terms, price, and access restrictions.
- b) Law firm libraries may require a confidentiality or nondisclosure clause intended to protect their clients' privacy. This is not the type of nondisclosure anticipated by Practice #3 above.
- c) Academic, State, Court, and County law libraries may be subject to external disclosure requirements, imposed by state or federal government, and thereby prohibited from entering into non-disclosure agreements.

### **Section II – License Components**

**Description:** From the vendor's perspective, licensing content is the distribution of the vendor's intellectual property to a third party. The distribution of the content is in exchange for a fee. Legally, licensing content requires that the licensor and the licensee agree by contract to each party's rights and obligations, including authorized users, permitted uses, terms of usage, length of access rights, and other terms governing the use of the vendor's content.

A written license agreement, signed by both parties, should represent any and all negotiated terms and conditions. An agreement that references terms and conditions contained in additional or external documentation, such as terms posted on a website, is discouraged. This practice, known as incorporation by reference, can result in compliance problems for all parties and for authorized users.

Any changes to the terms of a license agreement require written notice and subsequent formal agreement of both parties. The agreement should stipulate how much notice is required and how agreement of the parties will be registered (e-mail, mail, etc.).

**Practice #1:** A license agreement should be written in clear, non-technical language. Terms that could be ambiguous or subject to interpretation should be defined within the agreement to reflect the parties' intent.

**Practice #2:** Any amendment or change to the terms of an agreement requires written notice and formal agreement between the parties.

**Practice #3:** A license agreement should clearly and unambiguously identify the particular content that is the subject of the agreement.

**Practice #4:** A license agreement or appended pricing document should clearly and unambiguously state all costs and fees associated with the acquisition of the content.

**Practice #5:** A license agreement should state clearly whether the access rights being acquired by the licensee are for permanent use and ownership of the content or are subscription-based access rights only.

**Practice #6:** A license agreement should state clearly the period of time for which access rights are being acquired.

Practice Comments:

- a) Short-term license agreements should be considered as a strategy to meet research needs while managing limited fiscal resources.
- b) A short-term license agreement could also allow a library to evaluate demand for a product before committing to a long-term contract.
- c) A multi-year license agreement should reflect a greater discount or fixed pricing in consideration for the longer term commitment.

**Practice #7:** Incorporation by reference is discouraged. A license agreement should not reference terms and conditions outside of the written agreement, such as external documents or terms posted on a website. If any such terms must be referenced in the license agreement but are not included in their entirety within the four corners of the contract, they should be carefully reviewed. Make sure the document being referenced does not contain conflicting terms.

**Practice #8:** Neither party should rely on verbal assurances or understandings. A license agreement, along with any appendices, addendums or attachments, should comprise the whole of the agreement between the parties. All agreed terms should be incorporated into the written agreement.

**Practice #9:** A license agreement should not require the licensee to adhere to unspecified terms in a separate agreement between the licensor and a third party, such as a publisher or other copyright

holder, unless the terms are fully reiterated in the current license or fully disclosed and agreed to by the licensee.

**Practice #10:** The terms of the license should be considered fixed at the time the license is signed by both parties. If the terms are subject to change (e.g. scope of coverage, method of access), the agreement should require the licensor or licensee to notify the other party in writing in a timely and reasonable fashion of any such changes before they are implemented, and permit either party to terminate the agreement if the changes are not acceptable.

Practice Comment:

- a) Appropriate notification by the licensor to the licensee is necessary for any material changes in content, expiration or cancellation of the contract, changes to price, or any other modification for which the library requires notification. The agreement should state both the amount of notice required (30 days, 60 days, etc.) and the method of notice that is acceptable to the parties (written, e-mail, etc.).

**Practice #11:** Bundling is a marketing strategy that allows the vendor to offer several products and or formats for sale as one combined product. A license agreement should state the financial relationship, if any, between the electronic resources being licensed and any equivalent or associated publications in other formats.

**Practice #12:** A license agreement should require the licensor to comply with the American with Disabilities Act by supporting assistive software in a manner consistent with best practice guidelines and industry standards. Licensor should also ensure that product maintenance and upgrades are implemented in a manner that does not compromise product accessibility.

### **Section III - Authorized Use and Authorized Users**

**Description:** The library licenses access to electronic resources on behalf of end-users. When negotiating licensing agreements, the licensee should have a complete understanding of who will use the resource and how the end-users expect to use the licensed materials. The license terms should reflect any and all anticipated uses, and clearly state any limitations on use of the licensed content. Limitations on use imposed by the licensor should be reasonable and not impede the end user's ability to fully utilize the licensed materials.

**Practice #1:** The license agreement should clearly identify all classes of anticipated authorized users.

Practice Comment:

- a) Possible authorized users include students, visiting scholars, faculty (full-time, part-time, adjuncts), staff, alumni, members of the bench and bar, clients, members of the public, interns, summer associates, named attorneys, attorneys assigned to a particular practice group.

**Practice #2:** The contracting parties should be clearly identified in the agreement as licensee and licensor. Authorized users may or may not be parties to the agreement, depending on the type of library.

Practice Comments:

- a) In an academic or public law library, a license agreement should not require authorized users to enter into independent agreements with licensor through the use of click-through agreements.
- b) An agreement should identify the manner in which authorized users will be notified of the license terms.

**Practice #3:** The licensee should be willing to undertake reasonable and appropriate methods to notify authorized users of the terms of access to a licensed resource, and to enforce those terms. Enforcement of the terms of a license agreement must not violate the privacy and confidentiality of authorized users.

**Practice #4:** The licensee should be responsible for establishing policies under which authorized users make appropriate use of licensed resources.

**Practice #5:** A license agreement should not hold the licensee liable for unauthorized uses of the licensed resource by its users, as long as the licensee has implemented reasonable and appropriate methods to notify its user community of use restrictions.

**Practice #6:** A license agreement should require the licensor to give the licensee notice of any suspected or alleged license violations that come to the attention of the licensor and allow a reasonable time for the licensee to investigate and take corrective action, if appropriate.

**Practice #7:** A license agreement should clearly state the permitted uses of the electronic resource. Licensee should be sure the agreement reflects all anticipated uses, including but not limited to, printing, downloading, copying, mobile access, electronic reserves, scholarly sharing, interlibrary loan, inclusion in document management systems, text and data mining, and the development of course packs.

**Practice #8:** Licensors should agree that occasional and irregular use of limited portions of the licensed materials for inclusion in organization documents, communications to members of the organization or clients, or incorporation into government agency or court filings is permitted.

**Practice #9:** A license agreement should specify the means of authentication and access to the electronic content that are available to authorized users.

**Practice #10:** A license agreement should not require the use of an authentication system that creates an unnecessary barrier to access by authorized users.

**Practice #11:** A license agreement should recognize the affiliation of users with a given library or institution, regardless of users' physical location, and should allow for routine remote access to licensed electronic information resources.

**Section Comments:**

- a) It is desired that if a vendor provides mobile access:
  - 1) Mobile users will have the same rights of access to content as non-mobile users;
  - 2) Content will be compatible across platforms;
  - 3) Where content is licensed for a specific number of seats/users, a single user accessing content on multiple platforms should be counted as one seat/user.

**Section IV - Copyright and Intellectual Property**

**Description:** As information technology evolves, the laws governing intellectual property change to keep pace. Licensees must be aware of their organization’s rights and obligations under current copyright law.

**Practice #1:** A license agreement should recognize and not restrict, abrogate, or circumvent the rights of the licensee or its user community permitted under copyright law, including but not limited to the fair use provisions of Section 107 of the U.S Copyright Act (17 U.S.C 107) and the interlibrary loan provisions of Section 108 of the U.S. Copyright Act (17 U.S.C. 108).

**Practice #2:** A license agreement should support the practice of Interlibrary Loan (ILL) of digital resources. Using electronic, paper, or intermediated means, licensee may fulfill ILL requests from other institutions. Licensee agrees to fulfill such requests in compliance with Section 108 of the U. S. Copyright Act (17 USC 108).

**Practice #3:** A license agreement should not limit the rights of the licensee to use public domain content in any way, even when such content is included as part of the licensor's proprietary resource.

**Practice #4:** A license agreement should recognize the intellectual property rights of the licensee, the licensor and any relevant third-party.

**Practice #5:** A license agreement should require the licensor to defend, indemnify, and hold the licensee harmless from any action based on a claim that use of the resource in accordance with the license infringes any patent, copyright, trademark, or trade secret of any third party.

**Practice #6:** A license agreement should recognize and accommodate appropriate uses in an academic environment, including but not limited to electronic reserves, course packs, scholarly sharing, institutional archiving, text and data mining for research, and copies made for classroom teaching.

#### **Section Comments:**

- a) Law Firms that make filings at the US Patent and Trademark Office that contain copyrighted material should consult the [USPTO General Counsel's Memorandum](#) of January 19, 2012, “USPTO Position on Fair Use of Copies of NPL Made in Patent Examination,” for guidance on the payment of copyright fees.

#### **Section V – Archiving**

**Description:** Libraries provide both current and historical information for their users, and recognize a professional responsibility to preserve information for future generations. Information provided in a digital format presents unique challenges for preservation. A license agreement should address the issues related to long-term storage and access of the licensed materials.

**Practice #1:** When permanent use of a resource has been licensed, licensor should provide a usable archival copy of the licensed content, including any necessary interface. The license should specify the delivery format of the archival copy, and the conditions under which the licensee may access or refer users to the archival copy.

**Practice #2:** When subscription-based or renewable use of a resource has been licensed, a license agreement should specify what, if any, access to the licensed material would continue to be available after the subscription period lapses.

**Practice #3:** A license agreement should authorize the licensee to hold an archival copy of the licensed materials, to be maintained as a backup or archival copy during the entire term of the agreement. The copy may be provided by the licensor or created by the licensee.

**Practice #4:** A license agreement should specify who has permanent archival responsibility for the licensed content.

**Section Comments:**

- a) Many factors can impact the uninterrupted delivery of electronic data. Systems can fail; vendors can fold, merge or get acquired; data can erode. For critical data a library should have archival rights.
- b) In intellectual property, product liability, and other cases, access to content as it existed on key dates can have an economic value. In the same way that a patron would use a previous version of a book to establish liability of a current entity, archived versions of electronic content can be a critical part of fact finding.
- c) A third party may be designated to maintain a permanent archival copy.

**Section VI – User Privacy and Usage Tracking**

**Description:** Protecting the confidentiality and privacy of users is a major tenet of librarianship. Usage statistics are an important metric in making collection development decisions. Usage details also aid law firms in cost management and recovery. Statistics can assist both libraries and data vendors in evaluating demand and negotiating acceptable terms. However, the tracking, collection, and storage of user information by information vendors is of concern to library professionals because of the importance of protecting the privacy of users as well as their research products.

The laws and regulations of all relevant jurisdictions should guide licenses that cover multiple branches or patron types. Agreements should require that information about research activity linked to individual users remain confidential. To cover the risk of a data compromise or breach, libraries and vendors may decide to include contract language specifically relating to indemnification.

**Practice #1:** A license agreement should describe the usage statistics collected or generated by the licensor or any third parties, and the means available for the licensee or their designee to access those statistics.

**Practice #2:** The routine collection of usage data by either party to a license agreement should be predicated upon disclosure of such collection activities to the other party and must respect laws and institutional policies regarding confidentiality and privacy.

**Practice #3:** Information providers should not collect or store user-specific usage information.

**Section Comments:**

- a) Usage statistics aid both the licensee and licensor in maximizing the use of resources.
  - 1) Low usage may suggest any of the following; demand for the content is low, resource is not easily discoverable, interface may not be user-friendly, marketing efforts of either licensee or licensor may need attention, additional training may be required.

- 2) High usage may suggest any of the following; excellent content, institutional preference or product popularity, false positives generated by federated search tools.
  - 3) Usage statistics alone are insufficient to determine the value of a resource to a subscribing library. Statistics that seem either too low or too high require further investigation.
- b) Licensors should strive to provide [COUNTER or SUSHI compliant](#) usage statistics.
  - c) Law libraries may also track metrics through third party resources like Priory Solutions Research Monitor or Lucidea's Lookup Precision. Licensors should still provide usage statistics.
  - d) Law libraries and vendors can partner together to make better use of resources by using aggregated usage data. Training for resources can be adapted based on usage data as well.

## **Section VII –Termination/Renewal**

**Description:** A license agreement will state a specific expiration date. In the event that all parties carry out their rights and obligations accordingly, the license will terminate on that date. The parties are then free to renegotiate. An agreement might also contain an automatic renewal clause. This sets forth the terms under which the original agreement will remain in place after the initial term expires, without further negotiation. An agreement should also anticipate other circumstances under which termination of the agreement could occur, including a breach by either party.

**Practice #1:** A license agreement should clearly state the terms and conditions for renewal and termination.

**Practice #2:** A license agreement should provide termination/renewal rights that are acceptable to each party.

**Practice #3:** A license agreement should clearly identify the acts which constitute a breach, and the remedies available to the parties to correct such breach.

**Practice #4:** A license agreement should specify the financial obligations of both parties in the event that either party terminates the license.

**Practice #5:** Automatic renewal should not be assumed in the absence of specific language.

### **Section Comments:**

- a) The parties should consider including an escape clause provision. An escape clause may be needed in the event that significant changes occur within an organization, such as a material change in budget, revenues/appropriations, headcount/FTE, mission shift or merger of either party. The agreement should clearly define what constitutes a 'material change.'
- b) Automatic renewals – Automatic renewals are not per se undesirable. They may create efficiencies and streamline some work processes. However, the agreement should clearly define the terms for the parties to invoke or reject an automatic renewal.

## **Section VIII –Dispute Resolution**

**Description:** Parties to a license agreement who have a conflict resulting from their agreement may wish to choose alternative dispute resolution before litigation.

**Practice #1:** A license agreement should allow for the use of alternative dispute resolution to resolve any conflicts that may arise in relationship to the agreement.

**Practice #2:** A license agreement should stipulate the rights and obligations of the parties in the event of a dispute.

**Practice #3:** A license agreement should state the choice of law and choice of venue by which the parties will be governed in the event of a dispute.

**Section Comments:**

- a) The agreement should specify how an arbitrator or referee will be selected and the party responsible for fees.
- b) If the parties are not able to agree on choice of law and/or choice of venue, one strategy is for the agreement to remain silent on these issues. In the event of a dispute these issues would be resolved in the course of litigation.
- c) Academic, public, and government libraries often have dispute resolution terms dictated by statute or regulation.

**Section IX – Warranties/Quality of Service**

**Description:** A warranty provides assurance that a fact upon which a party relies is true, so that the relying party does not have to discover that fact for himself. A party that grants a warranty effectively indemnifies the other party from harm or loss if the warranty is not honored. A license agreement might also contain warranty disclaimers or limitations.

**Practice #1:** A license agreement should state the warranties extended by the licensor to the licensee with respect to the licensed content.

**Practice #2:** A license agreement should state the limitations on warranties between the licensee and licensor.

**Practice #3:** A license agreement should state the terms of compensation between licensee and licensor in the event that the warranty is not met or the quality of service falls below reasonable standards.

## Appendix A

### CHECKLIST FOR LICENSING ELECTRONIC RESOURCES

#### **Licensing Preparedness**

- The library has identified the individual(s) with the authority to negotiate/review the license agreement.
- The library has identified/defined all authorized users for the resource.
- The library has defined the required or acceptable uses for the resource.
- The library has identified/defined the non-negotiable requirements in the contract (e.g. non-disclosure agreement, state/federal law requirements, etc.)

#### **License Components**

- The license is written in clear, non-technical language. If not, consider requesting a revised license.
- The license clearly identifies the content that is the subject of the agreement.
- Parts of the license that have been deemed by the licensee as non-negotiable have been identified.
- Any external documents or terms referenced within the license agreement have been clearly identified and made available to the licensee.
- The license clearly states access rights of the licensee as either permanent ownership or subscription-based rights.
- The license clearly states the time period for access rights.
- The license allows for an appropriate length of time for notification by the vendor of any changes to content, price, the expiration of the contract, etc.
- The license clearly states that licensor shall communicate any changes to the terms and conditions in writing, and that any such changes are subject to acceptance by the licensee. Use of a resource does not constitute acceptance of any revised terms.

- The license clearly states that licensed resources comply with the American with Disabilities Act by supporting assistive software in a manner consistent with best practice guidelines and industry standards.

### **Authorized Use and Authorized Users**

- The license agreement identifies all classes/types of authorized users.
- The license reflects that authorized users are governed by the terms of the license, but are not parties to the agreement.
- The terms of the license do not violate the privacy and confidentiality of authorized users.
- The license clearly states policies under which authorized users can make appropriate use of licensed resources.
- The license does not hold the licensee liable for unauthorized use of the licensed resource by its users as long as the licensee acts in good faith to uphold the terms of the license.
- The license requires the licensor to give the licensee notice of any alleged license violation, and reasonable time for investigation and to correct the violation.
- The license clearly states the permitted uses of the licensed resource.
- The license specifies the means of authentication and access to the licensed content.
- The license allows for remote access to licensed content by the affiliation of users within a library or institution.

### **Copyright and Intellectual Property**

- The license agreement recognizes and does not restrict, abrogate or circumvent the rights of the licensee or its authorized users permitted under copyright law.
- The license supports the practice of Interlibrary Loan (ILL) of the licensed content.
- The license does not limit the use of public domain content.
- The license recognizes the intellectual property rights of the licensee, the licensor, and any relevant third-party.

- The license requires the licensor to defend, indemnify, and hold the licensee harmless from any action based on a claim that the use of the licensed content any way infringes any patent, copyright, trademark, or trade secret of a third party.
- The license recognizes and accommodates academic uses, including but not limited to electronic reserves, course packs, scholarly sharing, institutional archiving, text and data mining for research, and copies made for classroom teaching.

### **Archiving**

- Permanent use of a licensed resource:
  - the license requires the licensor to provide a usable archival copy of the licensed content.
  - The license specifies the delivery format of the archival copy of licensed content.
- Subscription-based or renewal use of a licensed resource:
  - The license specifies what licensed content will continue to be available after the subscription period ends.
- The license authorizes the licensee to hold an archival copy of the licensed content as a backup during the length of the agreement.
- The license specifies who has permanent archival responsibility for the licensed content.

### **Usage Tracking and User Privacy**

- The license clearly defines what usage statistics are needed and in what format by the licensee.
- The license specifies the type of statistics collected, how often statistics are collected, and how they are accessible by the licensee.

### **Termination/Renewal**

- The license clearly states the terms and conditions for renewal and termination.
- The license clearly identifies the acts which constitute a breach of contract, and the remedies available to all parties.
- The license clearly states whether the license will be automatically renewed unless the licensor has been notified with a specified number of days prior to the end of the agreement.

**Dispute Resolution**

- The license allows for the use of alternative dispute resolution to resolve any conflicts.
- The license clearly states the rights and obligations of all parties with respect to dispute resolution.
- The license states the choice of law and choice of venue, by which all parties will be governed, or remains silent and is resolved in the course of litigation.

**Warranties/Quality of Service**

- The limitations on warranties extended in the license are acceptable to the licensor.
- The terms of compensation offered in the license in the event that the licensed material is unavailable are acceptable to the licensor.
- Institutional requirements of all warranty provisions or disclaimers are included in the license.

## **Appendix B**

### **RESOURCES FOR LICENSING TERMS AND DEFINITIONS**

#### **Websites**

- Serials Acquisitions Glossary, ALA Association for Library Collections & Technical Services  
[http://www.ala.org/alcts/sites/ala.org.alcts/files/content/resources/collect/serials/acgglossary/05seracq\\_glo.pdf](http://www.ala.org/alcts/sites/ala.org.alcts/files/content/resources/collect/serials/acgglossary/05seracq_glo.pdf)
- LIBLICENSE Licensing Vocabulary (hosted by the Center for Research Libraries)  
<http://liblicense.crl.edu/resources/licensing-vocabulary/>  
<http://liblicense.crl.edu/resources/licensing-terms-descriptions/> (descriptions of terms and sample clauses)

#### **Books**

- Lipinski, Tomas A. "A Basic Licensing Glossary." In *The Librarian's Legal Companion for Licensing Information Resources and Services*, 397-513. Chicago: Neal-Schuman, 2013.

## Appendix C

### RESOURCES FOR SAMPLE CLAUSES AND MODEL LICENSE AGREEMENTS

#### Websites

- The Big Ten Academic Alliance provides standard language for select topics for inclusion in agreements between vendors and member libraries at:  
<http://www.btaa.org/library/licensing/standardized-agreement-language>.
- The California Digital Library (CDL) maintains a comprehensive [database of agreements](#) to which they are or have been a party. Any confidential content has been redacted. This is a great source of sample language, definitions and clauses for librarians involved in licensing. The agreements cover hundreds of different resources from a wide range of providers. The agreements range from a single page to more than 30 pages.
- LIBLICENSE, launched in 1997 and currently hosted by Center for Research Libraries, offers licensing terms and descriptions with [sample language](#), a [good glossary of licensing terms](#), and [model license agreements](#).
- [NELLCO Law Library Consortium Standard License Agreement](#)
- National Information Standards Organization, SERU: A Shared Electronic Resource Understanding. A recommended practice of the National Information Standard Organization, NISO RP-7-2012 (Baltimore, MD: National Information Standards Organization, 2012), [https://groups.niso.org/publications/rp/RP-7-2012\\_SERU.pdf](https://groups.niso.org/publications/rp/RP-7-2012_SERU.pdf).
- [NorthEast Research Libraries Consortium \(NERL\) Model License](#)
- Ontario Council of University Libraries (OCUL) Model Licenses for Electronic Books, Local Archiving and Hosting, and Electronic Journals and Databases.  
<https://ocul.on.ca/collections/licenses>. Periodically updated.
- Ringgold, Inc. maintains a set of public domain model licenses with commentary at [www.LicensingModels.com](http://www.LicensingModels.com). The site includes 6 unique agreements by institution type:
  - [Single Academic Institution License - Single Academic Institution License Commentary](#)
  - [Academic Consortia License -Academic Consortia License Commentary](#)
  - [Public Libraries License -Public Libraries License Commentary](#)
  - [Corporate and other Special Libraries License - Corporate and other Special Libraries License Commentary](#)
  - [E-book \(and journal archive purchase\) License - E-book \(and journal archive purchase\) License Commentary](#)

- o [30/60 day free trial License](#)

#### **Books**

- Lipinski, Tomas A. "Twenty Sample Key Clauses to Look for in Content Licenses." In *The Librarian's Legal Companion for Licensing Information Resources and Services*, 635-644. Chicago: Neal-Schuman, 2013.

## Appendix D

### BIBLIOGRAPHY - LICENSING AND PROCUREMENT OF ELECTRONIC RESOURCES

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## Appendix E

### BIBLIOGRAPHY – ACCESSIBILITY OF ELECTRONIC RESOURCES

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## **Appendix F**

### **PROCUREMENT PROCESS CHECKLIST FOR LAW LIBRARIES**

- Identify an information need
- Investigate market and evaluate competing products
- Check with consortia
- Establish trial(s)
- Enter resource(s) into ERM process/workflow
- Market to potential users during trial period
- Make acquisition decision at close of trial(s)
- Consider whether resource lends itself to [Shared Electronic Resources Understanding](#) (SERU) alternative to licensing
- Negotiate license agreement (see Appendix A: *Checklist for Licensing Electronic Resources*)
- Market and promote resource to users
- Monitor ongoing access and use
- Evaluate return on investment
- Renew or renegotiate terms