

AALL and Publisher Relations: An Open Statement to the Membership

Frank Houdek, President

Law librarians are justifiably concerned about the recent consolidation of the legal publishing industry and its actual and potential impact on their libraries and on access to legal information generally. All of us—no matter what our positions or the type of institution in which we work—are affected by the dramatic changes that have occurred in the legal information environment. While the merger of the Thomson Corporation and West Publishing is perhaps the most striking of these changes, the circumstances go beyond that particular matter and require a new activism on the part of law librarians and AALL.

The purpose of this statement is to assure you that AALL recognizes the critical nature of this situation and is committed to assuming that active role on your behalf. It will inform you about what AALL has done in the case of the West-Thomson merger and describe tangible steps taken by AALL that are designed to ameliorate conditions that for some (i.e., those librarians directly involved with acquisitions and budgeting) are approaching an intolerable state.

The West-Thomson Merger

AALL has been an active participant in the West-Thomson antitrust review process since it began in Spring 1996. Through our Washington Affairs Representative Robert Oakley, we have communicated the serious concerns of law librarians about the implications of the merger in two comment letters and personal meetings with Department of Justice officials. Despite these efforts, the results have been disappointing, not only to the Executive Board, but to many law librarians and others interested in the dissemination of legal information. The cause of that disappointment lies primarily in the conclusion that some of the primary concerns of law librarians, consistently emphasized by AALL throughout the process, are not adequately addressed in the outcome reached to date.

Although the Executive Board decided last spring not to formally oppose the merger, the Board, through Mr. Oakley, did send a strong letter to the Department of Justice outlining its concerns in this matter. The focus of the concerns expressed by the Board was not then, nor was it ever, on the issue of which company owns which other company, but rather with maintaining a sufficiently competitive environment to ensure the continuation of high quality legal information products at reasonable prices in a healthy competitive environment. The Board hoped that by making those concerns explicit, the Department of Justice would find a compromise that maximized the public interest.

Unfortunately, based on the changes that are occurring in the industry and the problems that our members are now facing, the Executive Board believes today that the actions of the Department of Justice, as approved by the United States District Court for the District of Columbia, do not achieve the goal that we sought.

Our letter of March 26, 1996, to Anne Bingaman, Assistant Attorney General of the Antitrust Division of the Department of Justice, outlined several specific areas of concern:

- The new merged company would have more than 50 percent market share in many key legal publication categories.
- Reduced competition would likely raise prices, a fact that could be "devastating" for law library and public library budgets, could limit access to legal information, and ultimately increase the cost of access to justice.
- The merger could have a negative impact on the need to have available a variety of format choices for legal information—forcing a move from fully accessible print materials to electronic formats that cost less to produce, but are inaccessible to consumers and libraries without budget or training to use them.
- The merger could reduce competition in the on-line arena and eliminate the market incentives to develop CD-ROM products, some of the most cost-effective and thorough research tools currently available.

When the proposed settlement was announced last summer, the Executive Board, again through Mr. Oakley, commented further in a letter to Craig Conrath, Chief of the Merger Task Force of the Antitrust Division. At that time we raised four additional concerns in response to the announced terms of the settlement:

- the viability of divesting individual titles, rather than entire subsidiary companies;
- pricing of the proposed license for the use of West's pagination;
- the license requirement that would have required users of West's pagination to give up their legal right to contest the copyright issue in court; and
- the impact of the merger on the market for online legal information.

In our view, many of these concerns have not been adequately addressed in the resolution of the matter. When, in February of this year, it appeared that there might be an opportunity to make further comments on the effect of the merger, Mr. Oakley, on behalf of the Board, requested that the U.S. District Court of the District of Columbia grant an extension of time for filing such comments in order to allow the Executive Board to deliberate further and decide how it should respond to the final proposed settlement. The Court had indicated its concern that the recent withdrawal of LEXIS from the matter had removed any major opposition to the merger. Our request to Judge Friedman was denied.

Although the current status of the settlement accommodates some of our concerns—for instance requiring that West-Thomson divest 52 publication titles and that it license West's Star Pagination system rather than keep it proprietary—AALL and others feel this minor divestiture isn't enough to ensure adequate industry competition. Unfortunately, although the issues remain of significant concern to the Board, the cost of seeking to intervene or filing a brief with the court *amicus curiae*, together with a realistic assessment of the chances of changing the outcome, have led the Board to decide not to take any further formal action in the West-Thomson matter at this time. We will, of course, continue to monitor the legal proceedings and take action where it seems appropriate.

What Naw for Law Librarians?

The concerns about the impact of consolidation that AALL has continuously voiced over the past year remain of paramount importance to all law librarians. Whatever one thinks about the West-Thomson matter, there can be no denying that the legal marketplace has changed more in the past several years, and on a more profound scale, than any currently active law librarian has ever seen. The era of "family publishers" has passed and we must recognize this reality. We may not like it, but this is the environment today and in the foreseeable future.

But that does not mean we must passively accept the new order. On the contrary, law librarians must be activist consumers, using our not inconsiderable position of strength in the legal information marketplace to achieve positive ends. The 1996 AALL Demographic Survey found that **law librarians who are AALL members control more than \$2.4 billion in legal publishing budgets each year. We have the final call on how approximately one-half of the industry's total dollars is spent.** The clout represented by those numbers is undeniable, and we must use it to ensure that law librarians play a major role in all aspects of the development, dissemination, and utilization of legal information products. Simply recognizing the power that we have, not only in the money we represent but in the tools that we have to affect how that money is spent—or not

spent—is the crucial first step. AALL will help with the next steps, the ones that let you put that power to work.

AALL's Next Steps on Your Behalf

The Executive Board devoted many hours of its recent meeting to discussing publisher consolidations, their impact on libraries and librarians, and how AALL could play a meaningful role in helping members not just weather the storm but right the ship and sail confidently into the future. We want you to know that AALL is working right now to ensure that law librarians can participate in this new legal publishing environment from a position of strength and knowledge. Here are just a few of the things already underway or planned for the very near future:

- A roundtable meeting with publisher representatives will be held this Spring to establish more effective and timely methods for specific problem resolution.
- A "President's Briefing on Publisher Relations and Relationships" will be prepared for the July issue of *AALL Spectrum*.
- The Committee on Relations with Information Vendors (CRIV) will post and keep timely a variety of practical information on AALLNET (<http://www.aallnet.org>), including reliable publisher contacts, hot publisher news items and an interactive complaint form to be completed on line.

change destroys uniformity between editions. The citation of foreign law materials has improved as has citation to state materials. For example, citing Texas legal materials now is more consistent with the rules that attorneys in Texas must follow. (See Hope Viner Samborn, *What's New in Blue: Citation Guidelines Change along with the Times*, *A.B.A. J.*, December 1996, at 16.)

We have come to expect a conservative approach to this subject since it is known as *A Uniform System of Citation*. Assuming the title means uniformity from one version to the next, the Sixteenth edition generally lives up to its name, although not all changes maintain uniformity. And—as pointed out in A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook*, 26 *Stetson L. Rev.* 53, 97-99 (1996)—the rules themselves are not entirely uniform within the Sixteenth edition. Finally, the complexity of the *Bluebook* makes uniformity difficult. Such detailed rules and minute variations quickly become complicated, causing the user to eventually despair of ever trying to get it right. One has to believe that there must be a simpler, better way to handle this project of citing material. However, whether you love it or hate it, it is here and we must deal with it. Maybe the Seventeenth edition will make all things clear.

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