

# David v. Goliath

*How librarians can defend themselves against questionable publishing practices*

By Ame Howard

Every librarian who handles intake or invoices will recognize the value of this session. The subscription invitation that looks suspiciously like an overdue invoice, the mysteriously received book that no one remembers ordering, the small print next to pre-checked boxes on web pages—these instances and more are examined in Lucy Rieger's session on unfair publishing practices.

## **For More Information:**

Download **free copies of the program handouts** and purchase an **audio recording** of this session online at AALL2go: [www.softconference.com/aall/default.asp](http://www.softconference.com/aall/default.asp).

## Program I-1: “Unfair Publishing Practice? Who’s to Stop Them? Superlawlibrarian! (and the Attorney General)”

*Presenters:* **Lucy Ann Rieger**, coordinator and moderator, Library Update, Inc.; **Tina Furlow**, Office of Attorney General, State of Florida Office; and **Betsy L. Stupski**, Office of Attorney General.

### Familiar Stories

Opening the session, Lucy Rieger of Library Update, Inc., tells a story of publishers’ practices gone wrong. She walked into a Newark law firm only to find a mess of publications piling up into chaos. In these piles she found duplicate orders, double-paid invoices, overlapping subscription terms, overpayment credits added to extend those subscriptions indefinitely—she even found multiple accounts for single publishers. Customer service representatives offered no help until she condescended to pitch a fit. But librarians should not have to throw a tantrum to get fair service.

Betsy Stupski of the Florida Office of the Attorney General tells another familiar tale. In 2006, she purchased a book, *The ADA Compliance Manual*. She placed the order by phone and in a year’s time renewed the subscription. Along with the renewal, she began receiving unrequested titles, complete with invoices. When she called customer service, she was told that she had agreed to these shipments along with her recent renewal of the *ADA Compliance Manual*. She was invited to keep the books and pay for them, or return them within 30 days to avoid charges to her account. But librarians should not have to spend their valuable time constantly shipping back unwanted books to avoid charges.

Rieger and Stupski’s stories are all too familiar. Publishers can sometimes confound consumers with aggressive marketing tactics, bewildering billing methods, or convoluted invoices. “Did I agree to that?” the librarian thinks. It is hard to know when a current problem is the result of an unchecked box on an invoice from 12 months ago. What can be done to protect oneself from potentially illegal practices?

### What is Unfair?

To answer that question, Tina Furlow, an attorney at the Florida Office of the Attorney General, begins by defining unfair and deceptive practices according to Florida law and the Federal Trade Commission. Though the official statutes will vary from state to state, deceptive practices are those with “a material representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances,” and unfair practices are those that cause “substantial consumer

injury, not outweighed by benefits to the consumer, that consumers could not reasonably have avoided.” She also briefly discusses the ever popular “unordered merchandise” statute from 39 USCS §3009, which states that any unrequested merchandise may be treated as a gift and attaches no obligation to the recipient.

But what does one do when a publisher claims that the merchandise was requested, as in Stupski’s case? Furlow outlines the many types of “negative option plans” that can lead to these conundrums. Remember book and CD clubs—the ones that offered 10 CDs for a penny each and then wrangled the buyer into full-price purchases every month thereafter? According to negative option plans, a seller may interpret “the failure of a consumer to reject goods or services as the acceptance of a sales offer.” You don’t have to say “Yes please!” You just have to forget to say “No, thank you.”

Though occasionally questionable, these legally valid plans come in many forms. They include pre-notification plans, continuity plans, automatic renewals, and trial offers, all of which Furlow explains in the session. Some of these plans will look familiar to librarians because common standing orders and update subscriptions are among them.

### How to Take Action

In order to run legal negative option plans, vendors must clearly and conspicuously disclose the terms of such plans to the potential customer. Herein lies the rub: using the four P’s—placement, proximity, presentation, and prominence—consumers, with the help of their attorneys, can evaluate the legality of a negative option plan. Are the terms placed in a noticeable location on the document? Are they in the proximity of the claims they modify? Is the wording and format presented understandably? Are the terms prominent, i.e., big enough to read?

Armed with Furlow’s legal expertise and Stupski’s detailed records of the transaction in question, the two took on

the publisher—and prevailed. Without ever admitting any wrongdoing, the publisher gladly entered a voluntary agreement to amend its practices to better serve its customers.

Much as everyone loves a David and Goliath story, in this case, Goliath wants desperately to remain friends with David. It is, after all, a mutually

photos by Brant Bender



Tina Furlow (top), attorney at the Florida Office of the Attorney General, and Lucy Ann Rieger (bottom), president of Library Update, Inc., discuss how librarians can use

the four P’s—placement, proximity, presentation, and prominence—to evaluate potentially deceptive publishing practices.



beneficial relationship worth maintaining on both sides, as Stupski points out in her checklist of best practices for such situations.

The PowerPoint presentation for this session is a quick introduction to unfair practices and the defense against them. With the notable exception of Stupski’s valuable checklist, it contains definitions of deceptive and unfair practices, examples of questionable invoices, and Furlow’s checklists for analyzing one’s own situation. This handout serves as a tool in defending consumers against the juggernauts.

As for the presentation itself, beyond the zany title and fun superheroine graphics, it lacked much flair or character. Though the verbal delivery was mediocre, the information is so relevant to many librarians’ daily activities that the reviewer certainly recommends listening to the audio recording of the session. Not only will it contain expansion on the handouts and Stupski’s best practices list, it will also contain the Q & A session, which yielded some interesting points. Of all the sessions this reviewer attended, “Unfair Publishing Practice” offered the best mix of useful and interesting. ■

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