

### Legal Publishing on the Eve of the Millennium

by Kendall F. Svengalis

The landscape of the legal publishing world, like that of corporate America generally, has undergone a dramatic transformation in the 1990s. In sharp contrast to 1977, when at least 23 legal publishers of some size and reputation were separately owned (along with scores of smaller ones), today the bulk of publishing resources are under three major corporate umbrellas: the Thomson Corporation, Reed-Elsevier, and Wolters Kluwer.

The seeds of the present organization of the legal publishing industry were planted in the late 1970s, when the Thomson Corporation of Canada came to appreciate the strategic importance of legal publishing from an investor's perspective. High profitability, reliable cash flow from subscription sales, a relatively affluent customer base, and lower risks in product development all contributed to the desirability of acquiring legal publishing entities. What distinguishes the current wave of mergers and acquisitions from those that preceded them, however, is that these are being played out on a global stage by foreign-owned corporations primarily interested in their profit potential.

Case in point: Reed Elsevier, the giant British-Dutch conglomerate with strong holdings in publishing, which itself was formed in 1993. Reed Elsevier's acquisition of LEXIS-NEXIS in 1994 gave it the base to expand into those additional areas necessary to ensure its future success in legal publishing.

Rival publisher Thomson Corporation, which was poised to acquire LEXIS-NEXIS when Reed Elsevier won it instead, shortly afterward pursued an even larger addition—the West Publishing Company. With West, Thomson acquired all three elements of an integrated legal publishing enterprise: WESTLAW, a major complement

of legal treatises and other analytical products; KeyCite, an impressive citator service already under development, along with West's dominant presence in the world of primary law. West's partnership with the cash-rich Thomson offered it the financial resources needed to move aggressively beyond its key customers—the largest law firms—which at the time provided the bulk of its revenue. When the merger deal was closed in June 1996 (pending a perfunctory federal court clearance), the Thomson Corporation began the colossal task of integrating its combined product lines into manageable and logical business units.

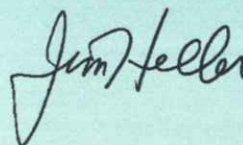
#### Anchors in the 'Legal Publishing Mega-Mall'

Now that the dust has pretty much settled, the shape of legal publishing is far more clearly delineated than it was a few years ago. Two major legal publishing giants—the Thomson Legal and Regulatory Group (TLRG) and Reed Elsevier—stand like two major anchor stores at opposite ends of the "Legal Publishing Mega-Mall." Each provides legal information consumers with an integrated product line consisting of a major online research service, a citator service of its own, and a large analytical and legal practice product line. Reed Elsevier helped itself considerably when it acquired Matthew Bender, the premier publisher of legal treatises, in 1998, shortly after its proposed merger with Wolters Kluwer fell through. Wolters Kluwer now stands on the second tier, with a solid presence in the field of analytical and current awareness tools (CCH and Aspen Law & Business), but without the major online research component or citator service. The remainder of the "mall" is filled with dozens of smaller specialty boutiques, offering everything from inexpensively priced online access to primary law, to practice books, subject-specific treatises

**D**uring the last decade of the 20th Century we have seen a revolution in the way legal information is published and disseminated, and at the same time, consolidation of the legal publishing industry. The movement from paper to CD-ROM to the Web offers opportunity for much broader access to legal information. In addition to electronic start-up companies such as CLR, Hyperlaw, and Versuslaw, governmental agencies are making their information available directly to the public via the Web. But during the past few years we have seen large scale consolidation of the "traditional" legal publishing industry. So although we have many more ways to locate primary sources—the law—we have fewer real choices for secondary sources that comment on the law.

Frank Houdek (Chair of AALL's Committee on Relations with Information Vendors, a.k.a. the CRIV) and Ken Svengalis, two AALL members with great knowledge of the legal publishing industry, prepared this Members' Briefing. I wanted the final Briefing during my presidential year to focus on legal publishing, not only to add to our knowledge and understanding of the industry, but also as a lead-in to AALL's 92nd Annual Meeting where we will offer many programs dealing with information policy issues. Many thanks to Ken and Frank (and to the other CRIV members) for this Briefing, and for their many contributions to our profession.

Jim Heller  
AALL President



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# Dealing With the New World of Leg

AALL works in a number of ways to help law librarians meet the daily challenges presented by the many recent changes in legal publishing. Its long-standing Committee on Relations with Information Vendors (CRIV), is increasingly recognized as a professional advocate for law librarians and a resource for publishers.

The CRIV is comprised of volunteers from all segments of AALL membership. The Committee facilitates communication between AALL and information vendors, fosters a cooperative working relationship between librarians and publishers, monitors complaints and provides

suggestions to vendors, and keeps AALL members informed of developments in legal publishing.

The CRIV's numerous and varied activities have a single overarching purpose: to facilitate a productive relationship between librarians and publishers. They range from creating tools and resources that enhance information exchange between publishers and librarians, visiting and sharing ideas with publishing executives, to evaluating and offering feedback on products and services. Some of the Committee's work, and valuable resources, are shared on these two pages.

**The CRIV's effectiveness depends on the active participation of librarians and publishers,** including publisher representatives who joined the Committee for the first time in 1998/99. Having developed the mechanisms to share information and resources, the CRIV relies on AALL members in the field to provide the content from which we all can learn. We encourage all law librarians to contact the CRIV about the problems—and solutions—they encounter in today's legal publishing environment.

## Advice from the CRIV: Getting Results from Customer Service

### 1. Don't delay.

Address erroneous charges, unordered items, or missing supplements as soon as you can to avoid more problems.

### 2. Identify the person in the organization who can solve your problem, and address your correspondence to that individual or position title.

- **To find the person,** ask your local sales rep to suggest a competent, experienced member of the department you need help from; search the company's Web site or catalog for department managers' names; or refer to the Vendor Information Grids CRIV Tool on the CRIVPage, which contains departmental phone numbers of major legal publishers.
- **Don't hesitate to contact** Customer Service Managers, Credit/Accounts Receivable Department or its manager, Company Sales Manager, or CRIV's Complaint Resolution Subcommittee if your complaint is not satisfactorily handled.

- **Once you find someone knowledgeable** within the vendor's organization, stick with that person until the particular problem at hand is resolved. Note phone extension, e-mail, and street addresses in your files, and make sure all future correspondence goes directly to that person.

### 3. Check all the facts available to you in-house, including library and accounts payable records, and the recollections of library and accounting staff who have worked on a matter.

### 4. Use at least two forms of communication.

Send a letter by mail, plus fax or e-mail; contact your sales representative (when appropriate) as well as the Customer Service Department.

### 5. Have all the necessary information at hand before you call, including a log of prior communication—for example:

- **account number,** invoice number and date, check number and date (and cancellation date if you have a canceled check);
- **names of people/departments** contacted earlier and what they promised to do (on what date and by what date). This is where a publisher log comes in handy.
- **accurate titles** and volume/release numbers when claiming missing shipments.

### 6. Keep copies of all correspondence regarding a problem, including e-mail messages. When someone seems to be able to resolve it, ask for written confirmation of the solution—especially for complicated issues.

### 7. Give the vendor time to correct the problem.

Two weeks is not unreasonable unless a problem is severe or unresolved for a

long period. If speaking by phone, ask how long it will take to solve the problem—e.g., "Should I call you back if I still see the charge on my April statement?" When writing a letter, tell the vendor that you will take a certain course of action "if we do not hear from you within 30 days."

### 8. Maintain an objective tone.

It is possible to tell a company that you have been inconvenienced and that you would like the problem to be corrected without getting personal or sarcastic.

### 9. Prevent problems before they occur.

**In the case of Returns:** Be sure to include a copy of the invoice with the returned item. State the reason for the return on the invoice or in an attached letter. Be sure to tell the vendor what action you want—e.g., cancel the invoice and the subscription; cancel this particular invoice but maintain the subscription. Send a copy of your instructions to Customer Service just in case the Returns Department does not send your message through proper channels.

**In the case of Claims:** Make it clear that you are not ordering a second copy of an item, but rather that you are claiming an item already on order.

*The above is an excerpt from a CRIV Tool to be made available in the near future. For more help, visit <http://www.aallnet.org/committee/criv> and look for CRIV Tools.*

# 1 Publishing: How AALL Can Help

## What the CRIV Does for You

### Complaint Resolution

CRIV's Complaint Resolution Subcommittee assists AALL members in resolving disputes with vendors. Until recently, this was done primarily through a formal complaint process. Now, the CRIV takes a much more active oversight role in identifying and working on publisher-related problems, including monitoring law-lib and other listservs and, when appropriate, working with librarians and publishers to help resolve problems. It also follows up by posting information to listserv members about the status and resolution of problems.

AALL members also may file a formal complaint using the form available on the CRIVPage, either electronically or through regular mail. Complainants are expected to have made a reasonable effort to resolve the problem by contacting the vendor in writing and by phone before filing the complaint. **Contact: Chris Graesser, Complaint Resolution Subcommittee Chair** ([cgraesser@brfg.com](mailto:cgraesser@brfg.com)).

### The CRIV Sheet

The CRIV's newsletter is published three times a year as an insert in *AALL Spectrum*. In addition to regular features (e.g., Cost-Saving Tips, Complaint Summaries, CRIV Tools, Industry News), each issue includes substantive articles on topics relating to developments and issues in the legal publishing arena. **Contact: Richard Humphrey, CRIV Sheet Editor** ([rhumphre@iupui.edu](mailto:rhumphre@iupui.edu)).

### CRIVGrams and CRIV Alerts

Announcements of important news issued electronically through listservs and, when necessary, AALL's broadcast e-mail capability. Archive available on CRIVPage. **Contact: Frank G. Houdek, CRIV Chair** ([houdek@siu.edu](mailto:houdek@siu.edu)).

### FTC Guides for the Law Book Industry

With links to the full text of the Guides (16 C.F.R. Pt. 256), a CRIV-prepared summary and analysis, and AALL's recommendations for revising the Guides (prepared per FTC request). **Contact: Chris Graesser, FTC Guides Revision Subcommittee Chair** ([cgraesser@brfg.com](mailto:cgraesser@brfg.com)).

## Publisher Log Keeps Inquiries on Track

The CRIV recommends using a publisher log to make dealing with publishers easier. This master record of communication and decisions made regarding a particular problem helps track activity by library and other staff and publisher contacts.

The publisher log should include:

- Specific information learned from, or disclosed to, staff outside the library
- Notes on all phone conversations with publisher customer service and sales representatives (note date, time, individual name, questions asked and answered, any promised action)
- Copies of all documentation related to an issue (invoices, packing slips, letters, e-mail messages)

See <http://www.aallnet.org/committee/criv/publog.htm>

## CRIV Online

### CRIVPage

(<http://www.aallnet.org/committee/criv/>) This content-rich page on AALL's Web site aims to be a law librarian's first resource choice for information about the world of legal information publishing. It is designed to keep users abreast of what is happening in the publishing industry and, especially, what the CRIV is doing to help librarians and vendors thrive in today's challenging environment. Highlights include:

- **CRIV Tools**, resources developed to help librarians in their daily work
- **Legal Publishers List**, a link listing ownership of legal publishing companies
- **In the News**, information about the latest events in legal publishing, including announcements and help from publishers, and CRIV news

- **FTC Guidelines** provides text of important standards covering the law book industry, as well as the CRIV's annotated guide to the standards
- **CRIVGram** and **CRIV Alert Archive**
- **CRIV Roster** and **CRIV Responsibilities**
- **CRIV Complaint Form** which can be completed online and e-mailed directly to the CRIV
- **"Comment/Suggestion Box"** for instant communication with the CRIV

**Contact: Janeen Heath, CRIV Webmaster** ([janeen.m.heath@bakernet.com](mailto:janeen.m.heath@bakernet.com)).

### CRIV Tools

Tangible products designed to help librarians work with publishers more effectively and efficiently, which are distributed in print through *The CRIV Sheet*, and/or electronically on CRIVPage.

Examples include:

- **Sample publisher log**
- **Vendor contact information** including street and e-mail addresses, phone numbers, Web sites, customer service and copyright contacts for each legal information vendor
- **Y2K compliance information**, a collection of links to publisher-maintained Web sites
- **Sample letters** to vendors
- **Tips on dealing with telemarketers**, including legal and trade guidelines [Published in *The CRIV Sheet* 21 (Feb. 1999), *AALL Spectrum* (Feb. 1999)]
- **Beginning Glossary of Publishing Terms**

**Contact: Rosanne Krikorian, Tools Subcommittee Chair** ([rkrikorian@law.whittier.edu](mailto:rkrikorian@law.whittier.edu)).

## Legal Publishing

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and CD-ROMs, and regulatory awareness products.

When the Justice Department approved the merger of Thomson and West in 1996, it in effect decided that legal publishing would become a two- or three-player market. The divestiture of a few high profile products and a star pagination licensing provision were supposed to appease opponents of the merger, while preserving Thomson's ability to assemble more content-rich computer-based products. Moreover, the Justice Department was convinced that weaknesses in West's star pagination copyright claims, together with the momentum of vendor-neutral case citation and the rise of the Internet, were sufficient to protect the public interest. And, should Thomson abuse its position by unfairly raising prices, the potential competition from the marketplace would stand as a final check.

### Benefits of Consolidation

It would be easy to find fault with the concentration of the industry without acknowledging some rather substantial benefits:

**Product Development**—There is no question that the merger wave has ushered in a heightened level of product development and integration. Both the West Group and Reed Elsevier have successfully integrated multiple product lines in both print and online formats. Both WESTLAW and LEXIS-NEXIS are now available through proprietary software and Web-based search engines, and provide their users with a wider variety of primary and secondary materials than previously existed.

**Better, Cheaper Citators**—With Shepard's withdrawal from WESTLAW, and the absence of cross-licensing, the marketing and selection of online services will increasingly be driven by citator preferences. Competition between Shepard's and KeyCite, coupled with substantial investments in product development, will guarantee that each of these services will be far better and less expensive than citator services were prior to the mergers.

**New Titles**—We also have witnessed an acceleration in the development of new treatise titles, both from the major players and smaller niche publishers. Online product catalogs provide consumers with more content and pricing information than ever before.

**Online Competition**—The relatively high cost of online legal research has also brought forth serious marketplace challenges from LOIS and VersusLaw, which are prepared to offer consumers access to desired primary law databases at sharply reduced costs.

### Challenges and Costs

Despite the benefits of consolidation, the legal publishing environment also presents a number of challenges and frustrations for legal information consumers.

**Larger product base**—The proliferation of legal information products has increased the size of the product base which must be supported, a development that presents a particular threat to law libraries with substantial collections of both traditional and cutting-edge products.

**Increasing Costs**—Both initial and supplementation costs have continued their upward spiral as publishers move to maximize revenue from their product holdings. Some publishers appear to have forgotten the distinction between "basic upkeep" and "additional upkeep" (FTC Guide § 256.14) when they take advantage of standing orders to ship questionable add-ons. The decline in the number of subscribers to print reporters, driven in large part by rising costs for office space in major cities, has forced up their costs at faster rates than in years past.

**Multiple Formats**—These challenges are intensified by the introduction of products in multiple formats that may or may not be accompanied by dual-format discounts.

**Price Competition Unlikely**—While there are no barriers to entering the legal information marketplace, the prospects for price competition are substantially reduced by the current concentration of authors and editorial resources in the hands of the major legal publishers, and by the expectation of similar product margins by potential competitors who are likely to recognize that consumer buying

decisions are more commonly based on substantive content than on price. An overarching concern is that smaller legal publishers with a winning product line also will find themselves attractive acquisition targets.

**Database Protection**—Legislation pending in Congress, specifically H.R. 354, the *Collections of Information Antipiracy Act*, is threatening to create copyright-like protections for databases of government-produced information. If enacted into law, this would, among other things, effectively negate recent trends in the federal courts, which have denied copyright protection to star pagination. This is all the more disconcerting because the Justice Department's approval of the Thomson-West merger was predicated on the assumption that these copyright claims would not withstand scrutiny in a post-Feist era.

### Looking Ahead to Careful Management

The pricing of information in electronic form will continue to be a source of confusion and frustration to law library directors anxious to restrain costs. Pricing models will continue to reflect publishers' attempts to protect and expand existing revenue streams, but will often fail to reflect real-world usage patterns for which transactional pricing would be more advantageous. As limited budgets come face-to-face with the revenue "requirements" of legal publishers, law librarians will have to exercise an even greater degree of care when making decisions regarding new acquisitions and standing orders. This process can be aided by AALL's Committee on Relations with Information Vendors (CRIV), increased group interaction with the publishers, and vigilance on the part of individual law librarians who take the time to share their knowledge and experiences with their colleagues, both informally and on the listservs.

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