

# ANTITRUST ISSUES IN SCHOLARLY & LEGAL PUBLISHING: THE ANTICOMPETITIVE IMPLICATIONS OF BUNDLING & THE CONDITIONS SET BY LARGE STM PUBLISHERS

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2:30–3:30 P.M.

PLAZA BALLROOM I

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## Discussion Leader

Meredith Butler, University at Albany, SUNY, Libraries

## Background

Over the past two decades, increased concentration in the for-profit publishing industry has been accompanied by significant escalation in the price of serials publications, eroding libraries' ability to provide users with the publications they need. Nowhere does this seem more evident than in the market for scientific, technical, and medical (STM) journals and legal serial publications where pricing, as well as marketing practices for electronic publications, threatens library budgets and ultimately the widespread availability of important writings to the public.

ARL, a partner in the Information Access Alliance, is advocating for new standards of antitrust review to be adopted by state and federal antitrust enforcement agencies in examining anticompetitive practices and merger transactions in the serials publishing industry.

When reviewing publisher practices or proposed mergers, we are asking antitrust authorities to consider the decision-making process used by libraries—the primary customers of STM and legal serial publications—to make purchasing decisions. In this context, one matter that arises is the publisher practice of bundling multiple serial subscriptions into a single subscription. Closely related are the conditions that are set by large STM publishers. Antitrust authorities are asking how publishers' practices of bundling individual journal subscriptions into single collection subscriptions harm libraries and what it is about them that we like.

## Local Implications of Bundling

- No-cancellation clauses have been a traditional part of bundled journal offers.
- While the broadened access packages are beneficial when a particular library is well funded, the inability to reduce the collection—or reduce the spending—creates significant problems when a particular library is not well funded.
- When publishers are able to bundle multiple serial publications into a single subscription, libraries are forced in effect to purchase items they may not want and pay the cost of those unwanted subscriptions. Changes in collections may be limited to a set of lower-value titles offered by the one publisher.

## System-Wide Implications of Bundling

- Bundling, while offering some efficiencies, ultimately limits the choices available to end-users of journal publications and diminishes access to a broad spectrum of information.
- Large publishers who bundle as a common practice ultimately force libraries to limit their subscriptions to titles from smaller publishers because of the high cost of bundled subscriptions. This can force cancellation of high-value scholarship from small publishers to maintain the bundle. It also creates substantial barriers to market entry for new journals from non-bundled publishers.
- As a system-wide practice, bundling has become a threat to widespread access to information.

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## Challenges for the Community of Research Libraries

- As long as peer institutions are supporting the traditional bundling model (because they're in a well-funded phase), it's not likely that we can avoid the penalties of the bundled model or negotiate effectively for different models.
- Do we want pricing models that return libraries to the position of selecting individual titles based on their specific content and price (and deselecting them when necessary) or are we willing to purchase a single collection subscription, with no opportunity to control spending with that publisher? As long as some of us are doing the latter, it will be unduly expensive for any of us to do the former.
- Have we allowed ourselves to become convinced that to get the benefits of the bundle we have to make sacrifices in terms of no cancellation, a single subscription for a group of titles, and multiyear commitments. We have, in a sense, accepted the features of the deal itself as a necessary bundle. But is that really true? Are there other options libraries can demand of large publishers that provide libraries the benefits of broader access to journals at a discounted price without accepting the other terms of the big deal?

## Discussion Questions

To inform the strategies of the Information Access Alliance, this discussion will consider the following questions.

- ARL libraries obviously like some key elements of bundling since we have signed on in great numbers. Are there characteristics of the bundle that ARL libraries object to?
- What remedies would you support if bundling were found to be an anticompetitive practice?