


## The 146th

 ARL Membership Meeting

### Concurrent Discussion Sessions

#### **Antitrust Issues in Scholarly & Legal Publishing: The Anticompetitive Implications of Bundling & the Conditions Set by Large STM Publishers**

Summary of the Concurrent Discussion Session May 26, 2005

**Discussion Leader: Meredith Butler, State University of New York - Albany**

#### **Background**

The Information Access Alliance, of which ARL is a member, recently sponsored an invitational symposium on antitrust issues surrounding scholarly publishing. The symposium and subsequent discussions with legal experts suggest that the time is ripe for the development of new approaches to confronting anticompetitive activities. Of particular interest to antitrust experts in law and economics is the practice of selling e-journals to institutions and consortia as bundles of titles.

This discussion considered the emerging landscape of publisher business practices, legal options, and alternatives such as more effective negotiation practices.

#### **Different approaches to antitrust**

The mergers that have characterized commercial scholarly publishing have attracted a great deal of attention from the library community. However, antitrust experts have suggested that other anticompetitive practices such as bundling could provide an emerging arena for pursuing antitrust advocacy. Legal experts have also noted that investigations into anticompetitive practices could be initiated by states' Attorneys General in addition to the Department of Justice.

The discussion raised some concerns about bundling as a practice including budget management concerns, collection management issues, and concern that unbundled publishers could be excluded from the market. Another point raised is the extent to which the market power of some publishers offering bundles weakens their motivation to truly negotiate in good faith.

#### **Negotiating complex bundles of e-journals present special challenges**

One important question discussed was the extent to which bundling equates to what has been historically labeled "the big deal." For the discussion, the group treated these as somewhat similar concepts. Two important issues that were raised were the problem of backing out of a bundled product and whether this difficulty may allow publishers to fail to negotiate in good faith. If a bundle is acknowledged to be essential to a library, then accepting terms that enable a library to manage costs or negotiate reduced expenditures for other reasons can become concessions a publisher is not motivated to entertain.

### **Is it us or is it them?**

A hot issue was whether libraries need to develop better skills as negotiators. Participants explored questions of what information could be shared that would make it easier for libraries to understand what might be a realistic range of outcomes to fight for in their negotiations. This raised concern as to the extent to which libraries can share information or take other actions to more successfully engage publishers in good faith negotiations. Libraries want to be confident that they know whether they have obtained a fair deal or whether publishers are abusing their market power. It was clear from the discussion that public institutions generally are much freer to keep negotiations public or at least ensure a public outcome than are private institutions.

### **What could help change the situation?**

Participants agreed that a better understanding of alternative negotiation strategies and terms for collections of journals would improve the situation. Data of interest ranged from other libraries' license terms to cost per use data for titles in collections to viable new models for purchasing article collections. The question of how libraries can more actively set the terms for purchase of a bundle of titles recurred regularly through the discussion.

There was also agreement that access to expertise, both legal advice and negotiation training, could be helpful in making negotiations for journal bundles more effective. Some libraries have drawn on outside experts, working with negotiating experts to improve their skills. Others have worked with attorneys in the past to clarify legitimate information sharing and to avoid making the consortium vulnerable to charges of collusion.

Building a supportive and educated faculty base on campus prior to negotiation was also acknowledged as an important foundation for building an atmosphere for genuine negotiation with publishers. Libraries cannot take a tough negotiating stance with publishers of large bundles without faculty support. Building faculty understanding requires substantial investments of time and effort. The sense of the group was that faculty support for reducing participation in big deals is strongest during tough economic times when faculty are likely to feel the library's pain.



© Association of Research Libraries, Washington, DC  
Maintained by [ARL Web Administrator](#)  
**Last Modified:** July 7, 2005