

*Cutting Deals: Controlling Costs with Vendors and Dealers**

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Introduction

The current recession has left its mark upon law libraries of all types: academic, governmental, and private. Governing bodies are reviewing budget requests with a stricter eye these days; and libraries which formerly could expect generous annual budgetary increases must often settle for minimal increases or learn to accept actual cuts. Nor has the downsizing of private law libraries been limited to reductions in acquisitions budgets. In the last two years we have witnessed the downsizing of library staffs as well, including the termination of some familiar names in the profession.

A cost-effective approach to law library expenditures is not something which should be applied only in lean times. A failure to question publishers' exorbitant costs and price increases in more "normal" years simply makes it more difficult to control costs in a fiscally tight environment. Our acquiescence in years past to the high cost of legal materials has simply made it more difficult to control the dragon's appetite in lean times.

While cost-cutting measures can be more easily defended in the present economic environment, they should be pursued at all times to ensure that the firm is getting the greatest value for its dollar. The following options and guidelines should be part of every librarian's overall plan for keeping acquisition costs under control. Keep in mind, however, that these options must be evaluated in light of your particular firm's priorities and operational profile, and must only be implemented in consultation with the attorneys who rely upon your services and the individuals or governing bodies who exercise ultimate control over your library's operations. Through the wise and judicious implementation of these options, the law firm librarian can help ensure that the practical impact of budget cuts are kept to a minimum in lean years and that the library resources acquired per dollar expended is maximized at all times.

- A. **Conduct a periodic review of all looseleaf services and other "high ticket" items and cancel those whose usage no longer justifies the expense.**
 1. Law firm librarians, as opposed to academic and governmental law librarians, are in the best position to make these judgments since they are able to poll individual departments and attorneys to ascertain their research habits and

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preferences. You may discover that the firm's interests or client base which prompted the service's initial purchase may no longer exist.

2. Submit lists of particular titles with their attendant costs for attorney review. Your users should be made conscious of these costs and their impact upon the library's total budget. Don't hesitate to make recommendations of possible cancellations based on your informed judgment regarding usage patterns and areas of duplication.
3. Cancelled titles can be retained on the shelves as long as they are suitably marked as "Non-current." As such, they retain much of their value as background reference tools without the high updating and filing costs. Updating can be performed by using standard digests, citators, or on-line services.
4. When the need arises, the service can simply be reinstated with the publisher.

B. Make every effort to reduce or eliminate the number of multiple copies of looseleaf services or newsletters.

1. While eliminating or reducing the number of office copies can be politically "tricky", you should make a regular effort to inform your managing partners or library committees of the costs involved and encourage individual subscribers to make use of library copies. This effort can probably yield the greatest degree of savings with the least impact upon the overall resources available within the firm.
2. Be careful to avoid pressures to photocopy newsletters as a way of compensating for the reduction in the number of copies. Publishers are increasingly protective of their copyrights and will take legal action to protect their interests.

C. Consider placing heavily supplemented secondary sources on an update as needed, or "write-for-order" basis.

1. This approach forces you to regularly reconsider the present utility of particular titles in light of current firm activity.
2. Titles can be updated as needed or incorporated into a cyclical pattern of reordering at regular intervals (usually every two years). One popular approach is to purchase 25% of your titles every six months, thereby completely replacing your collection every two years. Exceptions to this approach include such titles as Bender's *Forms of Discovery* and the various medical and trial practice sets which can be supplemented even less frequently.
3. Titles selected for this approach should be reviewed by individual departments for approval. Be sure to explain the philosophy behind this approach, including the following:
 - a. These are secondary sources which must not be relied upon for utmost currency.

- b. Material in "current" releases is usually eight to nine months old by the time your library receives it.
 - c. Updating should be performed by consulting primary sources, digests, citators and on-line services rather than relying upon treatise supplements. Subscribers must resist the publishers' attempts to turn individual treatises into citators, dated though they are.
 - d. Publishers who supplement secondary sources three to four times annually do it for financial reasons, not because the field of law is a particularly volatile one. A case in point: \$949.50 to update Bender's *Forms of Discovery* in 1990. Most changes are incremental not major.
 - e. Costs for the heavily supplemented treatises published by Matthew Bender have risen by an average of 18-20% annually in each of the last four years. The cost of updating Moore's *Federal Practice* has risen from \$834.00 to \$1655.00 between 1987 and 1990 and to \$2294.50 in 1991 - 38%.
4. Titles not kept up-to-date should be marked as such.
 5. When replacement sets are received, old sets can be given to attorneys for home use in lieu of discarding them.
 6. A systematic program of cyclically reordering most Matthew Bender titles every two years, for example, can save your firm 50% over the standing order cost. This saving is achieved through a combination of the discount, usually 40%, offered on new sales and waiting two years between purchases. An additional 10% discount is available only to governmental and academic libraries.
 7. Your library will also save considerably in filing time since the only updates requiring filing will be those received during the three-month period of free service.
- D. Place treatises with multiple cumulative supplements annually with an independent agent (e.g. Hein, Rothman, Gaunt) with instructions that you wish to receive Supplement No. 1 only for each year. This will allow you to reduce your firm's supplementation costs for these titles by as much as 66% if they are supplemented three times annually.**
- E. Be aware of the various discount programs offered by the leading legal publishers with which your firm does business. These include both discounts for multiple copies and discounts for multiple titles on the same order. Unless you are in immediate need of a particular title, it pays to wait and "batch" orders to achieve the maximum available discount. Check with your sales representative for details and review past "Cost Saving Tips" columns in *The CRIV Sheet*.**

- F. **Cancel materials which duplicate coverage of other services.** How much of that duplication is the result of an attempt to satisfy the personal preferences of your attorneys? What effort can be made to channel that usage into one service?
- G. **Develop cooperative arrangements and use inter-library loan with other firms in your building or general vicinity.** Take advantage of academic and governmental law libraries in your vicinity, but don't abuse whatever privileges are afforded your firm by those libraries. If you find you are using materials from those libraries with some frequency, acquire them for your own collection.
- H. **Consider the purchase of used books whenever possible.**
1. Used books cost 50-70% less than the same books new and are often in excellent condition.
 2. Large sets (e.g. regional reporters, *American Law Reports*, etc.) are the best candidates for purchase on the used book market. Heavily supplemented sets are less desirable candidates since the costs of updating may be considerable. Whenever possible, compare the cost of the new, discounted set (usually with period of free service) to the cost of a used set.
 3. Obtain price quotes from at least three different dealers. While some dealers regularly publish price lists, all will negotiate within a certain price range when they know you are shopping for the best price.
 4. Price quotes should be for a complete and current set. If you purchase an incomplete set, the publisher should deduct the cost of updating materials ("fill-up") from the complete set cost. The dealer may also assist you in buying the "fill-up" and setting up a standing order with the publisher.
 5. Reputable used book dealers will guarantee customer satisfaction prior to payment. Do not make either partial or full payment prior to receipt of books.
 6. Do not agree to pay a "re-stocking" charge if, for some reason, you must return the books. The dealer may expect you to pay return postage, but should not expect a 10% re-stocking charge. The possibility of returns is one of the risks dealers assume when they engage in the book business.
- I. **Maintain current and accurate standing order files to ensure that your library receives only those supplements and new editions which you really want.** Make sure that you communicate your wishes regarding supplementation to each of the major publishers to avoid receiving "related titles" or other unwanted materials. Beware of publishers who abuse their subscriptions lists to generate automatic sales. Report patterns of abuse to the Committee on Relations with Information Vendors (CRIV).

- J. **Cancel those little-used titles which are available online.**

- K. **Consider dropping annual supplements for a year, then reinstating them.** When appropriate, this technique may open up some opportunities for significant cost savings, not only for the year in question but as a result of the publishers' reinstatement promotions which may include discounted "fill-up" as well as a period of future free service.
 - 1. While sales representatives cannot encourage you to drop supplementation for this purpose, they can inform you of reinstatement programs once you have allowed your subscription to lapse.
 - 2. Adopt this strategy only after "attacking" all those secondary sources which are supplemented more than once a year. While the issuance of annual supplementation is the rule among publishers of secondary legal materials, it, too, can be avoided in lean times so long as it is cumulative and easy to reinstate.

- L. **Update peripheral reference books biannually, particularly those for whom the addresses and phone numbers are more important than the names of individuals which change more frequently (e.g. *American Library Directory*).** Or consider dropping them entirely and purchase new editions only as needed.

- M. **Never agree to take books "on approval."**
 - 1. Remember that all materials you order are, in effect, "on approval" since you have the right of return in most instances. In practice, however, "on approval" shipments are employed by publishers using telemarketers to convince you to accept materials which you have already decided not to purchase or have not had the opportunity to review in other media. If you refuse calls from telemarketers, this problem should be largely eliminated.
 - 2. "On approval" solicitations are a clever marketing device designed to get books or services into your library with the hope that they will never be returned and the invoices will be paid. Publishers are conscious of the dynamics which often prevent the return of "on approval" shipments, including inconvenience of returns, stamping and processing, delays which carry the shipment beyond the approval period, failure of the lawyer reviewing the book to return it to the library on time, payment of the invoice, etc.
 - 3. The only exceptions to this rule should be those which are the result of a conscious decision on the part of the librarian, hopefully by agreement with the publisher's sales representative. "On approval" shipments of looseleaf services or other costly items can be justified so long as a control mechanism is in place to prevent their being "lost in the shuffle." As a final protection, make an appointment with your sales representative a week or two prior to the expiration of the approval period to ensure that you have an opportunity

to make an informed judgment prior to the beginning of the subscription. Make sure that the appropriate department or attorneys have had an opportunity to review the title under consideration in a timely fashion.

- a. Some publishers now require the sales representative to obtain the customer's signature prior to expiration of the 60-day approval period or they will automatically cancel the service.
 - b. Other publishers will automatically enter a regular subscription, and invoice, if the customer fails to cancel prior to expiration of the approval period. Be sure you understand the terms of your "on approval" agreement.
4. A blanket policy against "on approval" orders will also prevent the occasional improper shipment resulting from overzealous telemarketers anxious to pad their sales with large impersonal organizations. With this policy in place, you can feel confident that you did not order the "mysterious" item in a weak moment.
 5. Make every effort to ensure that the attorneys in your firm refer all telephone solicitors to the acquisitions librarian and refrain from placing individual orders. If you have a problem with attorneys placing orders on their own, you may have to institute a policy which treats these as personal purchases with the attorney footing the bill.
- N. Do not accept unsolicited books.** According to U.S. Postal Law (39 USC s3009), you have the right to treat such unsolicited shipments as "gifts". Be sure to notify the publisher on what basis you are keeping the book to avoid repeated billing.
1. Many "unsolicited" books are the result of the librarian's failure to communicate clearly to the publisher that the library wants supplements only to those titles which have been specifically ordered. Several publishers rely upon customer ignorance or inaction to ship what it terms "related titles" under a blanket upkeep policy. This is a chronic problem which has prompted numerous complaints to CRIV's Subcommittee on Complaint Resolution.
 2. Most law librarians would argue that the publisher should not rely upon customer inaction as a justification to ship "related titles." Such shipments are usually generated by the failure to check the "I do NOT want Additional Upkeep Service" box on the publisher's order form (e.g. Clark Boardman Callaghan). Some publishers do not even provide this option (e.g. Shepard's/McGraw-Hill) and will presume to ship "revisions and companion volumes" as well as periodic supplementation on approval.
 3. Publishers who market books in this fashion seem to feel that the customer's "complicity" in failing to check the right box and the availability of an "on approval" provision absolve them of responsibility under the law. Librarians, however, should not be placed in the position of having to exercise a "negative option" to prevent the shipment of materials which should not be considered part of a normal standing order for supplementation. In any event, this will

no doubt continue to be a sticking point between law librarians and publishers in the future.

4. In light of the above, it is prudent to notify each major publisher in writing of your library's policy regarding supplementation. In particular, you should clearly indicate that your library is to receive no companion or related volumes without your express approval.
- O. Familiarize yourself with the *FTC Guides for the Law Book Industry* (16 CFR pt. 256). Although these *Guides* are not law per se, they are reflective of what the Federal Trade Commission would consider to be unacceptable practices. Reputable legal publishers will observe both the letter and spirit of the FTC guides.
- P. If you feel that a publisher has engaged in conduct violative of the FTC guides, and have gotten no satisfaction from the publisher, file a complaint with the Committee on Relations with Information Vendors (CRIV). The Subcommittee on Complaint Resolution will intervene and investigate the complaint. Summaries of investigated complaints are published three times per year in *The CRIV Sheet* and its predecessor, the *Publications Clearing House Bulletin* (vols.1-10), is an excellent means of getting "up to speed" on the subject of legal publishing practices.
- Q. Share your experiences with other law librarians in *The CRIV Sheet* either in the form of Letters to the Editor or feature articles.

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