CONTENT BEST PRACTICES:
A GUIDE TO THE FOUR DS: DEVELOPMENT, DISTRIBUTION, DISCOVERY AND DETAILS

Prepared by the
Content Committee, Business Law Section
American Bar Association

Written collaboratively by Section leaders, this guide describes some “best practices” for the development, distribution, and discovery of Content, as well as details about how the Content process works in the Business Law Section of the American Bar Association (the “Section” or “BLS”). Offering information that will make your outcomes more successful and your experiences less trying, it explains what each of these terms means, and why understanding them—and the role Content plays in the life of your committee, subcommittee, or other entity—is vital to your success as a Section leader. We believe that Content is the Section’s single most valuable asset. Thus, decisions you make about Content will directly affect both your leadership and the long-term viability of your committee, subcommittee, or other entity, and ultimately, the Section.

This Best Practices Guide is organized according to what we consider to be the main aspects of Content: Development, Distribution, Discovery, and Details.

- **Development** refers to the creation of Content.
- **Distribution** refers to the channels available for dissemination of Content, including an electronic magazine, a leading law review, a robust book publishing program, and vast amounts of live, remote, and “on demand” educational programming.
- **Discovery** refers to the ability of those interested in our Content—members, other lawyers, etc—to find it, in particular in digital formats (e.g., through Google and other popular internet search engines).
- **Details** refers to practical things you will need to bear in mind as you go about your Content projects.

Although, of necessity, we discuss the Four Ds sequentially, you should be attentive to each at all stages of the Content process, for the reasons discussed below.

This Best Practices Guide is a reference tool which seeks to anticipate and answer many common questions. It is a work-in-progress. As you have suggestions for revisions or clarifications, or hit upon practices that you find especially effective—or ineffective—please let us know, at npowell@ycst.com.

I. **Development.** To talk usefully about developing Content, it is important to define the term.

*What is Content?*

The *substantive intellectual work-product* of the Section, its members and its entities, regardless of form, is what we refer to as “Content.” It is important to distinguish between the *substance* of information and the *medium* through which the information is delivered. Think of Content as any information that is responsive to a legal problem. Some
examples include articles; papers; model agreements; checklists; presentations; substantive meetings; books; articles in *The Business Lawyer* and other publications; and CLE, webinars, and other educational programs and accompanying materials.

**What is not Content?**

The Section also develops material that is not Content. These will chiefly be materials related to the *internal governance and operations* of the Section or the Association. This Guide, for example, would not be considered Content under our definition.1

**Who Develops Content?**

The vast majority of our best (and best-selling) Content comes from Section entities—committees, subcommittees, task forces, etc. The Section’s Committees on Mergers and Acquisitions, Corporate Laws, and the Uniform Commercial Code publish *industry-leading treatises* as well as more accessible *introductory guides* to their respective subject matter. Both the Cyberspace Committee and the Committee on the Federal Regulation of Securities publish important surveys of developments in *The Business Lawyer* (the Section’s law review). These are simply illustrative examples — the number of entity-developed works is too long to list here.

Committee-generated Content generally reflects the considered *collective wisdom* of a diverse group informed by a range of experience. In this sense, it is a kind of “peer reviewed” work product, often reflecting greater *insight and nuance* than many other forms of Content. *Peer review* is important for both assuring the quality of a given project and for protecting the *reputation and influence* of the Section’s Content generally. By and large, the Section attracts, retains, and disseminates the views of many of the nation’s (indeed, the world’s) *leading business lawyers*. Committee-generated Content, produced through careful review and comment by the nation’s leading lawyers, should be of the *highest, most authoritative quality*, which of course is what the consumers of our Content demand and deserve.

Individual authors, and ad-hoc collaborators, can and do publish with or through the Section. Thus, many important articles in *The Business Lawyer* are authored by *individual judges, practitioners, or academics*. Sometimes, individual authors publish books, as well. But in general, the best-selling—and most authoritative—works tend to come from Section entities, and in particular the Section’s substantive committees and their task forces.

**A Word on Quality.**

It is important to emphasize that the *quality* of the Content your entity and its members produces is far more important than the *quantity*. While there are entities that should, but don’t, produce any Content at all, the Section’s *Content is not a volume business*. While it is true that the Section actually produces an enormous amount of Content—hundreds of educational programs, scores of articles and dozens of books in a given year—it is also true that *the overarching value of the Content is its quality*—both

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1 Materials associated with actions by the ABA House of Delegates or Board of Governors present special cases, which we have not yet had occasion to address (and hope never to have to address!).

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actual and perceived. Those who came before us in the Section’s leadership set the bar high, and we have the benefit of the prestige widely accorded Section Content. Our responsibility, in turn, is to consistently confirm and reinforce the Section’s reputation with consumers of our Content. Thus, every Content project your entity undertakes should aspire to produce the best, most authoritative work on the subject possible. This may take more time and energy than you would like—especially if you are impatient to attract new members or engage existing ones. But, in the long run, we serve the Section and business lawyers best by producing the best work, not necessarily the most or the fastest work. Content lives forever; the exigencies that tempt some to its hasty Development are little known and quickly forgotten.

**How to Develop Content.**

BLS entities vary widely in how they develop Content, although there are two basic and commonly followed approaches. One approach is the “one-off” project. A member or leader will decide that there is an important topic that warrants analysis and discussion. A committee, subcommittee, task force, or other entity will then commence work on the project. Frequently, one-off projects are organized as educational programs, either for meetings or broadcast. Usually, these programs will produce written materials, which are sometimes of high quality.

In many, probably most, cases, these one-off projects are just that: one-time events. There may be sound reasons for this, including that the subject is of fleeting interest or the demand for the Content is otherwise readily satisfied. As discussed below, however, we believe that even one-off projects can usually produce secondary works (through “repurposing”). Thus, it is often the case that written materials for an educational program can be converted, with comparatively little incremental effort, into a webinar for your committee and others, or a short article for a committee newsletter, for *Business Law Today*, or with somewhat more effort into a longer scholarly paper for *The Business Lawyer*.

The other approach is an ongoing Content project that is regularly updated. For example, each year the Committee on Business and Corporate Litigation publishes (as a book) its *Annual Review of Developments in Business and Corporate Litigation*. A few things are notable about this model:

- Because it’s updated annually, it’s easy to create educational programming around the book (repurposing from the other direction: this sort of written Content is easily reworked for educational programming, and when offered in successive years often develops a loyal and growing audience).
- Because it covers a number of diverse yet related topics, it is developed on a “distributed” basis; that is, many members of the sponsoring Committee contribute different pieces to it, with another member coordinating their compilation. When, inevitably, someone’s availability becomes limited, the project as a whole continues to move forward. Similarly, as participants cycle off the team and new participants arrive, continuity is assured.
- Distributed Development creates many opportunities for participation, comraderie, and the development of leaders in the Committee. Less experienced members can be paired and collaborate with more senior
members, honing their skills with little risk that final work product will fall short of the desired quality.

- Distributed Development requires significant organization and coordination. Most important: It requires a dedicated person to oversee and coordinate the many contributions in a timely fashion. Don’t underestimate the amount of time it takes to coordinate the collaborations of a diverse group of volunteers with day jobs, families, and other demands on their time.

There are many variations on these two basic approaches. While it is important to be mindful of the best approach for any given project, it is even more important to answer a very basic threshold question: why bother to develop Content at all?

**Why Develop Content?**

The single best reason to develop Content is to solve a problem of significance to your constituency, the lawyers, judges and academics in your practice area. Sometimes, as with the Annual Review of Developments, the problem will simply be staying current in particular fields. In (most) other cases, there will be new developments in law, or the world, or both that create new challenges for lawyers and others.

Mindfulness of two things is imperative. First, know the problem areas in your practice—both those present today and those likely to appear tomorrow. Our Content has value not only because it is produced by the best business lawyers in the nation, but also because it frequently is at the cutting edge of developments in practice. As discussed below (in Distribution), BLS Content is not always first to market—we are, after all, a group of volunteers with career commitments—but it is often valuable because it provides authoritative guidance on best practices in developing fields of practice. Developing Content for the Section may not give you the first word—but it may give you the opportunity to have the last word.

Second, your approach to Content should focus on problems, not products. Content can take many forms, and being deliberate about format and channel (discussed below) is important. But don’t think you must produce an educational program at a particular meeting simply because your committee has always done so. Develop a program if and only if it identifies and solves interesting and important problems facing lawyers who are current—or, equally important, potential—members of your committee. Many problems are self-evident, and so identify themselves—regulatory lawyers always want to hear from the regulators, for example. But some problems are not. Being a committee leader creates both the opportunity and the obligation to monitor developments in your practice area for problems that your members’ expertise can help to solve.

**What’s In It for You?**

Another way to answer the “why develop Content” question is to think in very concrete terms about what Content Development can do for you as a Section leader. What it can do is simple: it can help you succeed. Indeed, while we cannot prove this empirically, we think that Content is the single surest path to success as a leader. Why?

- Developing Content motivates people. If you (or your members) have an interesting problem to solve, others will want to help solve it. Developing
a team to solve that problem creates members who are more actively involved in the Section, and are likely to remain so.

- Developing Content attracts new members. While there are many reasons people join the Section, access to its Content is a high priority. Quality Content is central to our “value proposition”. If you want to grow the membership of your entity, produce Content that will interest like-minded lawyers.

- Developing Content improves the legal system. Important Content projects often have a direct impact on the workings of the legal system. The Corporate Laws Committee is the gatekeeper for our understanding about the Model Business Corporations Act. When the Committee on the Federal Regulation of Securities writes a comment letter to the Securities and Exchange Commission, it may well affect the direction of regulatory practice. In other words, Content is the vehicle through which you and your entity can affect the practice of law.

- Content has reputational effects. By influencing lawyers and the law, you will enhance your stature, and that of those who help to develop the Content. Content is the single best way for Section members to demonstrate—and thus market—their expertise.

Copyright Clearance.

Keep in mind that the ABA will ultimately require contributors and presenters to sign a speaker release or author agreement that either gives the ABA a non-exclusive right to use the Content as it wishes or that assigns the copyrights in such materials to the ABA. Contributors and presenters will also be asked to represent that the Content created or being used for ABA purposes does not infringe the copyrights of others. Thus, in developing Content, remember that the Content should be an "original work of authorship" in the copyright sense, being original to the author(s) or presenter(s) who created it. If an author or creator did not develop the Content himself or herself, it most likely will be necessary to obtain permission to use the materials and the permission will need to be broad enough to meet the ABA Content distribution needs. This is particularly true with respect to photographs and graphics that might be used in conjunction with CLE presentations. Also, for Content that is developed in a collaborative fashion, appropriate permission, releases, and assignments must be obtained from all contributors or "joint authors."
II. Distribution.

In tandem with the decision to develop Content, consider how it will be distributed.

Distribution Channels.

As noted above, the Section currently offers four main Distribution channels: (i) Business Law Today (the electronic magazine), (ii) The Business Lawyer (the law review), (iii) books, and (iv) educational programming. These are not, however, the only channels available to you. Important Content is often developed as white papers or memoranda in task forces or subcommittees. Comment letters and legislative guides can be valuable forms of Content for producers and consumers.

How to Select Channels.

Selection of Distribution channels depends largely on your goal in developing the Content.

Business Law Today.

The Section’s traditional magazine, distributed electronically to all Section members, features a variety of accessible and highly informative articles in each issue, sometimes centered around a common theme. With longer lead-times (normally between one to two months) than Committee Newsletters, yet less formality than The Business Lawyer, this is an ideal outlet for more general Content likely to be of interest to a broader audience. The specific requirements for submission of articles to Business Law Today can be found on the Author Guidelines page.

Please contact Rick Paszkiet, Manager, Content Development, at (312) 988-6040 or rick.paszkiet@americanbar.org if you have any questions.

The Business Lawyer.

The Section’s premier periodical, this law review showcases the best and latest thinking on topics of interest to the most informed and experienced lawyers, judges, and academics in the country. Content appearing in The Business Lawyer is often cited years, even decades, after its publication. The specific requirements for submission of articles to The Business Lawyer can be found on the TBL Submission Guidelines page.

Please contact Diane Babal, Production Manager, at (312) 988-5507 or diane.babal@americanbar.org if you have any questions.

Books.

The Section’s books include both franchises and one-off publications. An example of the former is the ABCs of the UCC series. Begun in 1993 and released in new editions from time to time, the series consists of readable paperbacks each devoted to a discrete article of the UCC (e.g., Article 2: Leases, Article 9: Secured Transactions). They are written by academics who teach the UCC, by those who served on the drafting committee for a given article, and by experienced practitioners, often in collaboration. An excellent companion to the statutory text and official comments, they are very helpful to those who must quickly familiarize themselves with these complex areas of law. An example of the latter is The Law of Guaranties: A Guide to U.S. and Canadian Law. Quite literally, members of several substantive committees lamented that no such compilation was
available and determined to produce one. With committee and Section support, and
contributions from lawyers expert in guarantee law in all relevant jurisdictions, they
completed this first-of-its-kind reference in 2013. (Not incidentally, they also adapted
portions of the work for live CLE programming shortly following publication – an author’s
book tour of sorts). The specific requirements for submission of books to the Publication
Board can be found here.

Please contact Rick Paszkiet, Manager, Content Development, at 312-988-6040 or
rick.paszkiet@americanbar.org if you have questions.

Educational Programming.

If your project is highly topical (or has a potentially limited shelf life), then an
educational program may be the way to start. Educational programs usually describe
problems, explain why they’re problematic, and present coping strategies or solutions.
They are generally presented in 60, 90, or 120 minute segments, whether for live CLE (e.g.,
at a Spring or Annual Section Meeting), webinar, or other presentation.

Please contact Mark Page, Meetings Director, at 312-988-5635 or
mark.page@americanbar.org if you have questions about educational programming.

Committee Newsletters.

There may be such urgency to your project that you want to provide your core
constituents quality Content as expeditiously as possible. Many of the Section’s
substantive committees publish and electronically distribute newsletters several times each
year (or more often). For example, the Commercial Finance and Uniform Commercial
Code Committees jointly publish the Commercial Law Newsletter. Their staff of six
experienced editors are generally able to react quickly when necessary to augment a
forthcoming edition to include or feature new Content.

Please contact Stephanie Rodriguez, Program Associate at 312-988-6398 or
stephanie.rodriguez@americanbar.org if you have questions about committee newsletters.

III. Discovery.

After Content and Distribution, the most important attribute of Content is its
discoverability (“if a tree falls. . .”).

In order to make Section content more readily discoverable, the Section has
developed an organizational structure (a “taxonomy”) to locate all BLS content that is
relevant and applicable to those subject areas that comprise the practice of business law,
with a particular focus on subjects where BLS members have created content in recent
years.

The Section will ultimately have a searchable index and user interface that will
improve access to content, content search, and discoverability. In that regard, think about
providing a digest or an abstract for the Content; using meaningful titles and introductory
paragraphs that include keywords (sometimes called “tags”); and avoid undiscoverable
formats, such as scanned PDFs.

IV. Details, Details, Details.
There are some technical things to bear in mind as you develop Content and think about how it can be distributed and discovered.

First, if you have not done so already, appoint a Content Director for your committee. Don’t assume you can add it to your other responsibilities. Many tasks, particularly when new to you, will take longer than you expect. Some will require your personal attention. Some you can anticipate, while others come out of nowhere. You’re part of a leadership team – assemble and empower your team, and let them help you succeed.

Second, give some thought to your committee’s Content strategy. What problems do you want to address while you are in a leadership position? If you struggle to identify worthwhile Content, or to find volunteers, consider launching recurrent Content, such as an annual update, and make it available both for programming and publication. If you struggle with the Content process, consider enlarging your leadership team by recruiting people with energy, enthusiasm, and the requisite skills and expertise.

Third, review the specific requirements of the various Distribution Channels in order to anticipate the various requirements, including lead time, format, etc. Taking this action at the beginning of the project will avoid frustration on your team’s part and will reduce issues with the relevant staff members in charge of the Distribution Channels.

Fourth, your team should consider the various discovery mechanisms available and make recommendations to allow your Content to be easily found by others (a mini-marketing plan). In that regard, you should seek the advice and counsel of the staff and members of the editorial boards for Business Law Today and The Business Lawyer, as well as the Publications Board (books).

Fifth, it is imperative that each of your Content projects have a single, clearly-designated responsible party. It may be the lead author, an editor, or another committee member not directly involved in the Development process (e.g., it could be the Content Director of your Committee). But it shouldn’t be you. It should be someone who keeps things on track, moving toward the goal, chasing down participants and their contributions, and provides you with timely and succinct updates.

Finally, although not technical in nature, do not forget to THANK your team, and the authors that help create the Content for your committee! Author recognition—reputational and otherwise—is usually the principal form of consideration paid to our Content creators. As business lawyers, we know that we get what we pay for. Because we do not pay our Content creators in cash, appreciation and recognition are the real currency of this realm. Spend them wisely and well.
CONTENT BEST PRACTICES CHECKLIST

1. Have you defined the project?
   1.1 What problems does it solve?
   1.2 Who is the intended audience?
   1.3 Which format(s) are most appropriate?
   1.4 What are the important deadlines?
   1.5 Is there a project timeline setting forth production expectations?

2. Who is responsible for the project?
   2.1 Who is on the team?
   2.2 Who will lead the team?
   2.3 Who will the team work with (students, junior attorneys, internal entities, external entities)?
   2.4 Who on the Section staff will be the contact person?
   2.5 Are there any special technical needs (e.g., group production)?
   2.6 Are there other entities (in the Section or other sections of the ABA) who might be interested in helping to develop or cosponsor the project?

3. How will the Content be distributed?
   3.1 What formats (channels) will the project take (e.g., program, BLT article, etc)? What are the specific requirements of that channel?
   3.2 What are the repurposing opportunities? Can program materials be restructured as a BLT article?
   3.3 If more than one format is contemplated, which format should come first?
   3.4 Is there a marketing plan (see 1.2 above)?
   3.5 To what extent do you want the Content to be “free” to the world, or free to section members, or subject to an additional fee (we usually charge for books, usually don’t charge members for other things).

4. Has the project leader completed and submitted a Content submission form? It’s available here.
   4.1 Has the project leader identified the “tags” (keywords) that describe the Content?

5. Permissions
   5.1 Is all or most of the Content an original work for the author(s) such that the author(s) own(s) the copyright (this is important for CLE credit)?
   5.2 To the extent not, can the authors provide copyright permission (not needed for government works, e.g., statutes and regulations)?
   5.3 Have all authors (contributors) executed the ABA’s copyright assignments and author releases?

6. Has there been (will there be) a “dress rehearsal” (if Content is educational programming)?
6.1 If a remote broadcast (e.g., webinar), has the technology been checked?
6.2 If an in-person program, will there be remote participation?
6.3 If an in-person program, will it be recorded for later distribution?

7. Have you thanked and recognized your authors and Content team?

8. Got questions? You can find more information about Content best practices at the Content Committee webpage or by contacting the Section’s Content Officer, Norman M. Powell, at 302-571-6629 or npowell@ycst.com.