

Title: Licensing of digital resources  
Authors: Jen McMeekin and Shirley Sullivan  
Present situation

Print and microform collections are being increasingly replaced by access to digital resources through licensing arrangements. A license agreement is a legal contract, a mutually acceptable set of understandings and commitments often arrived at through discussion and negotiation. Negotiation of licences is a new aspect of collection management, as print and microform purchases did not require this. The process of license negotiation is time consuming and resource intensive, requiring significant expertise by both participants in any balanced negotiation. Communities faced steep learning curves. Specialist staff have now acquired the experience and expertise in negotiation to ensure licence conditions meet the needs of the University for teaching, learning and research. Contracts overwrite copyright but we can negotiate licences and this gives us flexibility and our agreements can provide more flexibility than copyright law can.

Yale University Library developed early in the piece the LibLicense email discussion list and forum at <<http://www.library.yale.edu/~llicense/>>. This remains a shared resource of great value. Publishers as well as librarians engage in the discussions on this list. It was launched by Yale University library with support from the Council on Library and Information Resources. This influential project provides a forum for ongoing discussion around licensing issues and substantially improved licensing practice through the development and promotion of model agreements and standard definitions for many common license terms.

A number of resources have been created to assist with negotiations, including some examples of standard licences provided by publishers, librarians and consultants, underlining the need for cooperation and the creation of a mutual understanding between publishers and librarians (<<http://www.caul.edu.au/datasets/e-resource.html>>, <<http://www.licensingmodels.com/>>). Scholarly publishing is international in its scope. The efforts to create standard agreements have been successful in creating shared understanding of common license terms for electronic publications and have assisted in many areas in moving libraries and publishers toward mutual agreement on many issues. They are the result of consultation in which librarians, publishers and subscription agents have been actively involved. A standard licence offers substantial benefits both to publishers and libraries by removing the overhead of bilateral license negotiation.

Publishers normally have only one licence agreement for all customers. Negotiating by Australian libraries has allowed access to, for instance “walk in users”. Most US and UK Libraries do not allow this. Currently we agree that the licence will be governed by the laws of the country of origin and very few Australian libraries have been able to change this. An ideal situation would be that the any dispute arising should be subject to the courts of the country of the licensee.

An important consideration when signing licence agreements is perpetual access. Unlike print resources, which the Library owns, it is necessary to ensure that we have perpetual access to digital resources that we have already paid when we cancel a current subscription. This is unless it is very clear that the product is only offered for the life of the subscription and we knowingly agree. These products are aggregations, such as Proquest, Ebsco, Gale Expanded Academic as well as indexing and abstracting services. With regards to these products this is entirely appropriate.

An aggregation is a hosting database for many publisher products and provide extensive access to the University staff and students at a very reasonable price. Publishers may remove their products at any time, however the Library may already subscribe to the full publisher package. For example, Blackwell, Oxford University Press, Taylor and Francis, ScienceDirect. If the Library cancels the full package we retain perpetual access only to the titles we subscribe to individually.

The University of Melbourne has purchased most of the current JSTOR collections in the interests of preservation and will need to continue purchasing these collections. It will also be necessary to contribute to Portico and other non profit organisations to host our electronic journals and books.

The DLF Electronic Resource Management Initiative

<http://www.diglib.org/standards/dlf-erm02.htm>, has been an important development for licence tracking and standards and in collaboration with libraries and publisher developed and is still refining the ERM's (Electronic Resource Management)

There is a need to ensure licence terms are readily available to our users but also need to educate on legal uses of resources/compliance. Institutional responsibility for complying with the terms should be limited to reasonable efforts to educate users regarding use restrictions. ERM has been developed to handle this and make conditions available.

The University of Melbourne is now endeavouring to ensure licence terms are readily available for our licensed products to all University staff and students through our ERM.

Extra resources for electronically transferring these terms and conditions may be required.

The future – 10 years out

Using license agreements to license electronic resources has become a norm for libraries and publishers, and both communities have laboured to promote shared understanding of expectations for many license terms. While negotiated contracts are appropriate for some transactions, libraries and publishers are questioning their necessity for all transactions. It is time consuming and therefore expensive for librarians, publishers and vendors to create their own licences. There will be a move to acceptance of a generic licence where the institution might offer this to the publisher rather than accept a publisher drawn licence. Librarians and publishers can use a commonly

shared understanding of the content provider, the subscribing institution and authorized users; the nature of the content; use of materials and inappropriate uses; privacy and confidentiality; online performance and service provision; and archiving and perpetual access.