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License Agreement for Electronic Resources in Libraries: Issues and Challenges

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Abstract

The present study tries to highlight the aspects and issues involved in licensing the agreement for electronic resources in libraries. The terms and clauses involved in licensing are discussed in detail. Licensing involves too much of legal terms which often are not understandable easily to librarians. A minimum understanding of legal terms involved in licensing by librarians will help to make commending decisions in license agreements of Electronic resources. The issues in electronic resources licensing are much complicated than print resources.

Keywords: *Licenses, Electronic Resources, Libraries, Issues, Challenges.*



1. Introduction

Libraries are used as storehouse of books in past centuries, during the end of 18th century and beginning of the 19th century the revolution of libraries as information and knowledge centre started. The information started to flood into libraries after the invention of printing Machine by Gutenberg libraries were overloaded with information and techniques and technology started to enter into libraries, Classification and cataloguing became as major activities. Libraries and librarians called theory of understanding the library management as “Library Science”.

In 1960’s computers started to enter libraries by creating history and revolution in library services. During the microcomputer revolution of 1980’s libraries acquired software and data on diskettes and offered databases on CD-ROM. Databases on CD-ROM began to contain full text. Search interfaces became more straight forward and simpler to use (Hawthorne, 2008). The invention of WWW by Tim Berners-Lee in 1989 bought information explosion worldwide. The libraries till now were dealing with books, journals, newspaper etc. Which are in print format but they were forced to accept the changes like e-books, e-journals, e-database etc. every form of information resources was available in electronic format. The intangible information resource has to be acquired, classified, catalogued and indexed for the sake of use by library patrons.

The revolution of electronic resource brought an ease to librarians. The traditional concept of libraries changed from four walled building to digital libraries, access information anywhere, anytime. The threat of libraries without librarians began in 20th century, which made librarians to struggle for existence. The library profession proved Darwin’s theory of “Survival of Fittest” and librarians began to learn and experience the changing information communication technology. In 21st century librarians are called as Knowledge Managers, Information scientist etc. Due to their role of versatility of making library more and more useful to all the users everyday with changing technology in the library. Everyday Librarians have to face new challenges to cope up with the demands of patrons.

2. Electronic Resources Management

Electronic resources rule the world of information, this resources has to be made reach to all the users of libraries. Electronic resources or Electronic Information Resources are nothing but the e-journals, e-books, databases, e-directories, e-encyclopaedia etc. In short all the information resources will be available in electronic format. Similarly electronic resources management. Electronic resources management is the area of library technical services responsible for the evaluation, selection, pricing, securing, maintenance and provision of electronic resources. As electronic resource collections continue to expand, associated workflows and processes have grown in complexity (Smith, 2008). ERM should support the acquisition and management of licensed e-resources along with integration into other library system modules or may be standard alone system with a public interface, either separate or integrated in to OPAC which is desirable and also provided with e-reserve, course packs and inter library loan. ERM involves acquiring of e-resource providing access to users through a single platform administration or Management of issues and challenges involved in licensing, copy right and fair use and assisting or supporting the users for using the e-resources.

3. License agreements

“Librarians are from Mars and Publishes/vendors are from Venus”

License agreements or License is a legal and binding contract between the parties or “A Contract or An agreement between two or more parties creating obligations that is enforceable or otherwise recognizable at law”. According to David (2005) Licensing can be classified into two broad categories

- I. End –user agreement; end –user agreements tend to be the most common type of license and they will specify how a piece of software could be utilized by a license.
- II. Site – License Agreement: site licenses are complicated and lengthy, fairly standard for all institutions or they may be very particular and individualized, requiring much negotiation between vendor and licensee.

The license agreement is the agreement which Librarians has to deal on regular basis. The conflict or issues between librarians and publishers are never ending; both provide information to users but in different way of approach. Information is commodity to publishers and librarians tends to provide the same information as service. Unfortunately, librarians generally are uncomfortable with negotiating electronic license agreements few librarians negotiate contracts on a regular basis and even fewer are trained in the negotiation of contracts (Alford, 2002) various professional associations and individual universities have developed documents to state the needs and requirements for license that are acceptable by individual research institutions and library consortia. These documents have been revised over time to time to reflect the changing understanding and requirements of the community (Davis & Feather, 2008).

Librarians should know what does a license agreement consists before signing it physically or making it a contract, well librarians need to learn law to understand all the legality of license but he/she should clearly understand what does a license contains to ensure the rights of users and for beneficial of Institution. Generally a license agreement consists of following “terms” or “clauses”.

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| a) The parties | k) License undertakings |
| b) Interpretation of the agreement | l) Implementation and evaluation |
| c) Definitions | m) Warranties, undertakings, indemnities |
| d) Choice of law | n) Force majeure |
| e) The agreement | o) Assignments |
| f) The rights granted under the license | p) Notices |
| g) Usage restrictions | q) Dispute settlement |
| h) Term and termination | r) Schedules |
| i) Delivery and access to licensed materials | s) Signatures |
| j) License fee | |

These are the important aspects of license agreements that librarians should know.

- a) The parties: the parties here are publishers or vendors and libraries or librarians (consortia).
- b) Interpretation of the agreement : the meaning of technical terms used in it

- c) Definitions: the definitions of things which might have different meanings in different language, countries and cultures.
 - d) Choice of Law: every country prefers its own law, not all the publishers will agree to confine themselves our law.
 - e) The agreement: it is the heart of the contract and summarizes, what is being bought or provided for agreed price.
 - f) The rights granted under the license: which determine what librarians are allowed to do with licensed materials.
 - g) Use or usage restrictions : defines what librarians are not allowed to do with the licensed materials
 - h) Term and termination: the term of license is the period during which the publisher must provide accesses. A license should always contain terms which set out a mechanism or circumstances upon which the license must terminate.
 - i) Delivery and access to licensed materials: perpetual access is very important for the library, which should be granted automatically.
 - j) License fee: can be included in main clause or in separate schedule and it should be inclusive fee i.e. inclusive of all services and products.
 - k) License (Library undertakings) Libraries should watch out for actor that place an unreasonable responsibility on the library for acts not performed in accordance with License.
 - l) Implementation and Evaluation : Implementation of license agreements and its evaluation over a period
 - m) Warranties, undertakings, indemnities: which is crucial to the library is that the publisher is the owner of the intellectual property rights in the licensed material and has the authority to grant the license.
 - n) Force Majeure: is a condition beyond the control of the parties such as was strikes, floods, power failures, destruction of network facilities etc. Not foreseen by the parties and which prevented performance under the contract.
 - o) Assignments : This clause may prohibit the assignment of the license to another party. Corporate libraries especially will want to be sure that the assignment clause details how an assignment may be made in the case of a corporate purchase or takeover.
 - p) Notices: Notification of specific issues to licensee
 - q) Dispute settlement: conflict settlement of two parties involved in license.
 - r) Schedules are a substantive and integral part of the agreement. Schedules will include list of the licensed materials, the dates of delivery the format and media of delivery and a list of locations where the licensed materials can be used.
 - s) Signatures: the signatures of the both the parties i.e. Licensee and provider.
- The list of terms is never ending, but a minimum knowledge of License agreements terms would definitely help to solve the conflicts of electronic resources management.
- The list of terms is never ending, but a minimum knowledge of license agreements terms would definitely help to solve the conflicts of electronic resources management.

4. Issues and challenges of Licenses agreement of ERM

Librarians are responsible for acquiring the relevant resources to the libraries and for guarding and promoting the usage of the resources. All written/e-documents like recommendations, approvals, orders, acquisition records, etc. Thus licensing involves the challenges and issues. Some of issues along with remedies are discussed below.

- i. Access v/s ownership
- ii. Authorized users v/s Walk in users
- iii. Amendment of license terms or services
- iv. Cancellation
- v. Choice of law and venue
- vi. Confidentiality of license terms
- vii. Cost
- viii. Reimbursement
- ix. Online performance and services
- x. Changing vendors and publishers

i. Access v/s ownership

An issue that will make a large difference in the makeup of the rest of the license is whether you are purchasing or leasing the electronic content. A purchase of the content will provide ownership content to the library generally with a large down payment and modest annual maintenance fee. A lease of content will take the form of access to content via an annual subscription. The purchase of content can take many forms including the deliverance of digital back files of entire databases content to the library once and combined with access to the same content via the vendors interface or access to the agreement i.e. perpetual access to back files but not materials published later for materials, where the license only provides access to materials, the access will cease at the expiration of the license agreement.

ii. Authorized users v/s Walk in users

The authorized users section limits who is able to access the electronic resource in question because of the ease of access to digital information license agreements for digital content must contain definition of "Users" walk in users/ patrons are outside the primary patron group ex. Public patrons in academic library.

iii. Authorized uses

The libraries should be aware that many licenses allow or prohibit uses with general or expansive phrasing. It is important to pay attention to such language as it will have an effect on the bundle of rights that a license allows. The fair use doctrine provides users with a wide array of permissions but these permissions can be waived or negotiated away (Okerson, Stenlake & Harper, 2006) when a license reduces the rights that a library holds in relation to a copyrighted work, the library and its users are restrained by the terms of the license and are no longer protected.(Richards, 2001).



iv. Choice of law & Venue

The choice of law section is where the license designates which country's law will govern a contract dispute as contracts. In which court the contract litigations takes place is controlled by the venue or choice of forum sections, jurisdiction where a lawsuit can proceed often specifically authorized by statute.

v. Confidentiality of license terms

Some vendors include a provision in their license that would prohibit the discussion of the terms of the license by the licenses. Vendors will generally include this in a license when they want to keep the licensee from sharing terms with other parties & libraries. This is most often an issue when a vendor is in practice of varying its pricing, access, or authorized user for a product on a license by license basis. These terms are problematic in that they allow vendors to control the information available to libraries as they try to negotiate their own licenses and generally ensure that the library has a weaker bargaining provision because of their lack information.

vi. Cancellation

This provision specifies if and when a party to the license may end an agreement and what repercussions for that action would be often cancellation of a license by the license before its term has run will result in a forfeiture of the already paid annual subscription cost or a payment penalty in the case of a multilayer agreement. If a libraries budget fluctuates year to year for instance a court or public library whose budget is controlled by the state it is a good idea to include language in this section that would allow the library to cancel a multilayer agreement without penalty.

vii. Reimbursement

The license agreement contract will generally cover continual access to digital content for a subscription period. There are times where access to an electronic resource is not available due to internet or network problems at the library but also due to network problems on the vendor side in the latter case it is important that a library be able to receive a pro data prefund for the resources downtime if the electronic content is unavailable for a sufficient period of time.

viii. Online performance and services

The vendors should provide reasonable assurances regarding the availability and performance of its serves, including redundancy and disaster plans. The online performances and services is an issue. Some vendors provide 24X7 accesses to the resources but not all. Additional customer support for providing technical support/ customer service should be available to provide assistance during standard working laws.



ix. Changing vendors and publishers

“WILEY BOUGHT BLACKWELL” --- “CSA BOUGHT PROQUEST”

The agreement was with Blackwell & Proquest, should librarians pay again for the same resources? What happened to the old license agreements made? The librarians should be aware of transfer agreements or terms/ clauses should be included which protects the rights of librarians or Institutions.

x. Cost

The price of a resource can be a major issue in license agreements and sometimes it's the main issue. In market many resources will have a standard list of price on a take it or leave it basis. Regardless of the payment model, it is important that the contract prohibits the vendor from unilaterally changing the pricing (Okerson, Stenlake, & Harper, 2006). Another way to easily reduce the annual cost of an electronic resource subscription is to license a multiyear subscription to the resource. A multiyear license can cut 5 to 20% from the annual price for a resource. Additionally, if a resource is available from multiple vendors you will often be able to get vendors to match or beat the subscription cost offered by another vendor. If multiple libraries on a university campus are interested in the same electronic resource then it may also be possible to share the cost so that no one library has to pay for access to a resource where usage would be largely spread across a campus. A further way to cut costs is for a library to cancel print subscriptions to material that it is also subscribing to electronically. If this is a real possibility or definite plan it is imperative to negotiate the ability to cancel print into the license agreements as some licenses have language prohibiting print cancellations. Some resources will have alternative pricing models that may be less expensive. These models can be flat-fee, package, or pay-per-view.

A flat-fee model is similar to a monthly or annual subscription cost. Usage, but more usually downloading, can be capped at a certain amount in any given month or annually. A package plan, which is often a pricing model for electronic journals, will provide access to an array of journals for a single cost rather than licensing each journal separately. Richards (2001) notes that package plans often do not meet librarian expectations because usually a small percentage of the journal titles in a package get the large majority of usage, in essence meaning that libraries are paying for electronic access to additional journals that may not be necessary for their patrons' research needs. Package plans will often allow for the cancellations of print subscriptions, but allowed cancellations may be capped at a certain percentage per year. A pay-per-view plan would limit the cost to the library to the actual searches and downloads performed. This plan is most appropriate for an electronic resource that will not receive much use and is costly on a subscription basis. For a resource that is highly used, a pay-per-view model will generally be more expensive than a subscription.

A library's membership in a consortium is another way for a library to get more electronic resources for less money. As Kohl and Sanville (2006) note, this should not be confused with getting electronic resources more cheaply via a consortia membership (i.e., a library can increase its access to electronic resource titles, usually e-journals or e-books, for a percentage more money than it currently pays for the titles it holds in print). While the relatively cheap additional expenditure for access to a large



number of new titles can be a tantalizing incentive, consortia deals can have other costs including high administrative costs (Stange, 2006), a movement away from a patron-focused collection to a more general collection due to the aggregate nature of multilibrary packages (Scigliano, 2002), and a lesser ability to re-negotiate deals at renewal. Other positives to consortial packages include the ability to cancel print subscriptions to rely on the electronic version (this needs to be negotiated at the outset as many consortial packages have print cancellation limitations) and the ability of the member libraries to withdraw print collections in reliance on the electronic for access and a particular member library for archival purposes.

5. Model Licenses

Model license are licenses drafted licenses available online for free, which contain more favourable provisions than any standard commercial license for access and use of electronic journal and datasets. Model license contain provisions that allow students and staff to make effective use of resources for learning, teaching and research. Librarians can utilize this model and demand the publisher/vendors to make it as license agreements. There are plenty of research projects and research carried on library license which provide help and support for license agreements for all the resources.

- **LIBLICENSE:** LIBLICENSE is completely desiccated for licensing digital content which is a project initiated in 1997 by Ann Shumelda Okerson.
- **Licensing Models.org:** An organisation which provides a model standard licenses for use by publishers, librarians and subscription agents for electronic resources which cover all the aspects of licensing including single academic/ institution license, e-book or e-journal licenses.

EIFL Model License, NISO and lists goes on this resource will act as tool for selection of license to an individual institution as well as for consortia.

6. Conclusion

Electronic resource have become the most powerful information sources in 21st century libraries and librarians play major role in providing this information resource which bought/rented with majority of budget expenditure. License agreements play a major role in providing rights to user and librarian access of Electronic information resources. If license agreements are neglected i.e. might have been paying the publisher for resources which we are already owner. Thus in order to protect the interest and rights of library patron's librarians should take little extra case in viewing the license agreements for its fair use. Librarians should be knowledgeable in concern with the legality involved in the licensing of electronic information resources.



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