

Licensing Digital Resources

How to avoid the legal pitfalls

2nd edition
2001



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Note to 2nd edition:

This guide was written and updated by Emanuella Giavarra LLM for the European Commission funded projects ECUP+ and CELIP. The projects were co-ordinated by EBLIDA, the European Bureau of Library, Information and Documentation Associations.

The first edition was published in November 1998 and the second edition in September 2001. The goals of ECUP+ (European Copyright User Platform, 1996-1999) were to increase awareness and to stimulate discussion on copyright issues amongst librarians and with rights holders, to draw up model license clauses for the acquisition and use of electronic information and to establish a Copyright Focal Point.

The goals of CELIP (Central and Eastern European Copyright User Platform, 2000-2001) were to extend the ECUP+ platform to licensing issues in central and eastern Europe by developing the professional skills of librarians and information workers.

Introduction

In the paper environment, the librarian buys books to which its users have potentially unlimited access. Once bought, the book is the library's forever. By contrast, in the digital environment, the librarian is in many cases expected to buy *access* to the electronic copy for a specific period of time and under certain conditions of use. Access is mostly bought via a licence. A licence is a formal authority to do something which would otherwise be unlawful. Licences are mostly regulated by contract law. The degree of access to and use permitted of an electronic journal depends heavily on the terms and conditions negotiated in the licence for that specific product.

When a copyright holder (in many cases, the publisher) sends a licence agreement, it should be kept in mind that this is, in fact, an *invitation* to negotiate the terms and conditions under which the product(s) may be used. Usually their model licence is sent, which should be read carefully, amended as necessary and returned to show the terms on which the library is prepared to conclude a contract.

Most of the licences are written by lawyers and are often in English. The technical language used may not be familiar to librarians, is off-putting to read and can be difficult to understand. However, with library resources increasingly being made available in electronic format, it is important to understand what is being agreed to.

Failing to sign or ignoring the terms and conditions does not invalidate the terms nor does it stop them from applying. Indeed, using the product or service following notification of the terms and conditions, will often be construed as acceptance of those terms and conditions and the library may be bound by them.

This licensing guide has been compiled in order to help you understand the meaning and consequences of common clauses contained in a licence.

Copyright versus licensing

For many years, librarians and their representative organisations have argued that the existing exceptions for librarians and their users granted under copyright law should be extended to cover the use of digital resources.

The use of licences and therefore the introduction of contract law to regulate the use of digital resources, has brought the status of existing copyright exceptions into question. Contract law is dominated by the concept of *freedom of contract*, which means that the parties to a contract are free to negotiate the terms of use of copyrighted material or even waive the rights granted to them by copyright law.

This is all fair and good when negotiations are conducted by equal parties. In the case of copyrighted material, it must be remembered that one party has an exclusive right (monopoly right) over the material and the other party, in this case the library, requires access to the work in order to fulfil its mission.

Furthermore, the library is not always aware of the fact that licences may override copyright exceptions, and that by signing a licence, it is giving up its statutory rights under national copyright legislation. The legal world remains divided over the status of copyright exceptions and the responsibilities of governments in this area. Therefore, we advise anybody negotiating such licences to incorporate the following clause:

“This Licence shall be deemed to complement and extend the rights of the Licensee under the national Copyright Act and nothing in this Licence shall constitute a waiver of any statutory rights held by the Licensee from time to time under that Act or any amending legislation.”

This clause will safeguard that the statutory rights granted by the national copyright act cannot be overridden by the licence.

Licence framework

Generally, a licence agreement consists of clauses that deal with:

- The Parties
- Recitals
- Interpretation of the Agreement
 - Definitions
 - Choice of law
- The Agreement
- The Rights granted under the Licence
- Usage Restrictions
- Term and Termination
- Delivery and Access to the Licensed Materials
- Licence Fee
- Licensee's (Library) Undertakings
- Implementation and Evaluation
- Warranties, Undertakings, Indemnities
- Force Majeure
- Assignment
- Notices
- Dispute Settlement
- Schedules
- Signatures

Instead of using the words Licensee and Licensor, we have opted for calling the Licensee 'the Library' and the Licensor 'the Publisher'. Not all the clauses will be discussed in detail. Some of them speak for themselves.

Clause by clause explanation

Recitals

After giving details of the parties, there is usually a set of paragraphs called recitals. The recitals give a brief overview of what is intended to be achieved by the contract. Strictly speaking, recitals are not part of the contract itself. Their role is to form a brief record of the objectives of the parties and to give the factual context in which the contract was originally written. They may be used at some date in the future, if the contract requires interpretation as a result of a dispute.

Interpretation of the Agreement

definitions

Legal drafting requires the use of precise wording. Thus, where concepts are complex or it might take some time to explain a short phrase, a word is chosen as shorthand to signify them. There is a tendency to skim over the interpretation clause but it is important not to overlook the definitions. A subtle change in the meaning of a definition can have a significant impact throughout the whole contract. Also, if an unpleasant surprise is slipped into the contract, this is where it is most likely to be introduced.

choice of law

A fundamental clause in this section is the national law chosen for the interpretation of the licence and the court chosen for submitting a claim against the Publisher or the Library. Most licences choose the national law most suitable for the Publisher. From a cost perspective, it is advisable that you amend this clause to the law and the court which is most convenient for you or for both parties. Otherwise, you could end up using U.S. law, for example, for the interpretation of your licence and having to travel to a U.S. court to advocate your case.

The Agreement

This is the heart of the contract and summarises what is being bought or provided for the price. The agreement must be phrased in clear and unambiguous terms. Matters phrased in terms of desires or wishes will not be binding. Most importantly, the agreement must identify precisely what is being purchased for the price being paid. Anything which is not included won't be provided in the price and may have to be negotiated for an extra fee.

The Rights granted under the Licence

The clauses under this header determine what you are allowed to do with the Licensed Materials. Make sure that you list here every activity you wish to do or you would like your users to be able to do with the Licensed Materials. Anything which is not mentioned here will not be allowed, unless you either re-negotiate the licence or buy extra rights later under a further licence. The list of activities can be as long or as short as you choose and just depends on how much you can afford to pay. Be aware that you should not negotiate over the statutory rights already granted to you by your national copyright law or by international treaties (see also section “Copyright versus licensing” and specifically the suggested clause to safeguard these statutory rights). Indeed, these rights should not even be listed in the licence, but many librarians prefer to include them in the licence as an “aide mémoire” for convenience.

The definition of authorised users and the places from where the Licensed Materials can be accessed is of pre-eminent importance under this section.

Authorised users are most commonly divided by publishers into “Authorised Users” and “Walk-in Users”. However, what these terms cover can vary greatly from licence to licence.

The ECUP Steering Group¹ decided against using the division between ‘Authorised Users’ and ‘Walk-in Users’, because it was perceived as confusing. ‘Walk-in Users’ are also authorised to use the Licensed Materials, but in many cases not in the same way as Authorised Users.

A more comprehensive division involves “Members” of the institution and “Non-Members”. “Non-Members” can be divided into “Registered Walk-in Users”, “Unregistered Walk-in Users” (such as visitors to a public library) and “Registered Remote Users”.

In the end, it does not matter what the users are called, as long as the definitions cover the user groups to whom you wish to provide access. Members, Registered Walk-in Users, Registered Remote Users and Site could be defined as follows:

Members of the institution	members of staff employed by or otherwise accredited to the institution and students of that institution, who are permitted to access the secure network and who have been issued with a password or other authentication
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Registered Walk-in Users	members of the public who are registered by open registration as permitted users of the library service and who are permitted to access the secure network by means of work stations located at the library facility and who have been issued with a password or other authentication
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¹ The ECUP Steering Group was established to co-ordinate and evaluate the results of the ECUP+ project. A list of Steering Group members is at <http://www.eblida.org/ecupinfo.html>

Unregistered Walk-in Users	members of the public who are not registered as users of the library service and who are permitted to access the secure network by means of work stations located at the library facility for certain purposes as defined in this Agreement
Registered Remote Users	an organisation or individual members of the public registered as permitted user of the library service and who are permitted to access the secure network from places other than the library facility
Site	means the premises of the Library and other such places where Members work and study, including without limitations halls of residence and lodgings and homes of Members

The following list will give you a flavour of the type and scope of rights included in current, commercial site-licences:

The right:

- to access the publisher's server
- to store the Licensed Materials locally
- to integrate the Licensed Materials into the local system infrastructures and information services
- to index the Licensed Materials
- to make the Licensed Materials accessible to the Members of the institution on Site for their research, teaching and private study purposes
- to permit Members of the institution to print and/or download individual articles for their research, teaching and private study purposes
- to provide access to and permit copying by Registered Walk-in Users for their research, teaching and private study purposes
- to permit the reproduction and inclusion of copies (hard copy or electronic form) in course packs

Inter-library Loan and Electronic Document Delivery remain difficult subjects. Inter-library Loan (ILL) of printed material has long been an accepted activity in the print world. In the electronic environment, the term ILL and the activity itself are hotly contentious issues. Librarians and publishers have been trying to reach a consensus on the issue for many years. One of the obstacles to reaching agreement is the lack of clear definitions describing how librarians wish to share their resources.

It is of utmost importance to distinguish between Inter-library Loan of print documents and Inter-library Loan of electronic documents. First of all, the term loan suggests that the material is returned at some point in time. This only applies to books in the print environment, but not for material in the electronic environment. Terms that could cover the activity more accurately are Inter-library Resource Sharing and Inter-library Use. As long as this is limited to sharing the information between libraries, and not with third parties, these terms could be used alongside on demand Electronic Document Delivery to end-users (third parties).

Inter-library Loan in the electronic environment has not been the subject of extensive research. There is more research available in the area of Electronic Document Delivery. A very useful publication is a comparative analysis of copyright problems in electronic document delivery by Bernt Hugenholtz and Dirk Visser.² This is the result of a study commissioned by DG XIII (now DG Information Society) of the European Commission to analyse and compare the copyright laws in the EU and EFTA countries in respect of electronic document delivery. One of the conclusions of the comparative analysis was that the absence of legislative and judicial guidance has made it difficult, if not impossible, to precisely define the copyright status of electronic document delivery in many European countries.

Clearly, it will take some time to find legally satisfactory solutions for all the parties. In the meantime, it is of the utmost importance that librarians and publishers try to understand each others positions and to try to find workable solutions by defining the activities they want to conduct as precisely as possible. This will not only assist the decision makers in the legislative process, but will also assist librarians and publishers in their negotiations for licences of electronic resources.

² Comparative Analysis of the Copyright Problems of Electronic Document Delivery
by Dr P. Bernt Hugenholtz and Dirk J.G. Visser, 1994

Usage Restrictions

These clauses define what you are not allowed to do with the Licensed Materials. The most common usage restrictions are:

- substantial or systematic reproduction
- re-distribution, re-selling, loan or sub-licensing
- systematic supply or distribution in any form to anyone other than to Members of the institution

Term and Termination

Term

If there is no specific provision concerning the commencement of the licence, than the agreement will commence from the date upon which it is signed. In order to avoid misunderstanding, however, it is usual to include a provision which deals with this point. Where there is a starting date other than the date of signature, there is no reason why this cannot be before the date of signature if the parties so wish.

The term of the licence is the period during which the publisher must provide access and the library must pay. The licence can only be “cancelled” before the end of the term if there is a fundamental breach of the licence or there is some other provision allowing for earlier termination (such as on the happening of a certain event e.g. insolvency, or by one party giving the other a period of notice).

Licences can be as long or as short as the parties decide and can always be renewed. In the interest of precision, state the date of termination explicitly rather than the length of the term. It is possible to have a licence which will carry on for an indefinite period and can be brought to an end by due notice.

Termination

A licence should always contain terms which set out a mechanism or circumstances upon which the licence must terminate. This is to prevent the library from being locked into a contract where it is obliged to pay for products or services the publisher no longer provides properly or which the library no longer wants.

Under the general law, a contract may be terminated at any time by notice if the other party defaults by failing to perform any obligations on its part. This applies only if there has been a serious breach of contract.

A practical solution is to provide a mechanism to give the breaching party an opportunity to remedy the default. A common period is thirty days after receipt of a written notice to this effect. If the default is remedied in this period of time, the termination will not become effective. If the default is not remedied within the time span given, then the contract is terminated. Upon termination on a default by the Publisher, it would be fair for the Publisher to repay the Library a proportion of the licence fee which represents the paid, but unexpired term. This provision should be incorporated into the breach of contract clause.

Perpetual access

It may be required that certain provisions remain in force after the termination of the agreement. A very important provision is perpetual access to the Licensed Material. This should apply in the event that the licence terminates because of expiration or, under certain conditions, breach of contract. Perpetual access is not automatically granted and a specific provision for this must be included in the licence. In both events, the Library should ask the Publisher to provide continuing access to the Licensed Material under that licence either from the Publisher's server, or through a third party, or by supplying electronic files to the Library.

Whether the licence terminates on the default of the Publisher or the Library, perpetual access should be granted to that part of the Licensed Material to which the Library was lawfully entitled until the breach occurred. Usually, perpetual access will only be granted by the Publisher on the condition that the Library continues to observe the obligations as negotiated under the licence with respect to restrictions on usage, alterations and security.

Delivery and Access to the Licensed Materials

It is important to be as precise as possible about the date of delivery of the Licensed Materials, their frequency, the format and media. It perhaps goes without saying that the media must be in a form which the Library can both access and use; to avoid the risk of later dispute the licence should specify clearly what these are. Should the materials not arrive in

time, the Publisher will usually have 30 days to remedy the breach (see Termination). It is advisable to include the details in a Schedule, instead of in the main clauses of the licence.

Should you wish to receive the electronic copy before or at the same time as the print copy, a clause to this end can be incorporated in the licence. In the event that parts of the Licensed Material are withdrawn or discontinued, it would be fair for provision to be made that the Library can ask the Publisher to reimburse it for that proportion of the fee representing the price of that Licensed Material that has been withdrawn or discontinued.

Under this header, you will also find clauses relating to accessing the Licensed Materials, such as the delivery of access codes, adequate capacity and bandwidth of the Publisher's server to support the usage of the Library, etc.

Licence Fee

The licence fee can be included in the main clause or in a separate Schedule. Make sure that the licence fee is an all inclusive fee i.e. inclusive of all services and products provided by the Publisher and inclusive of all sales, use or similar taxes. This is to avoid hidden costs being charged at a later stage. Provisions for when the licence fee should be paid and, where it is paid in stages, the frequency and value of each payment should also be included.

Library Undertakings

This section is very important to publishers. You will find here provisions where the Library undertakes that neither it nor its users will infringe copyright or any other proprietary rights by for example, modifying, adapting, transforming, translating and creating derivative works of the Licensed Materials or parts of it.

The Library also undertakes that it will use or allow its users to use the Licensed Materials in accordance with the terms and conditions as laid down in the licence. Libraries should watch out for clauses that place an unreasonable responsibility on the Library for acts not performed in

accordance with the licence e.g. for acts which are not within its direct control. In the event of an infringement, it should be perceived reasonable to ask the Library to notify the Publisher of any infringement that comes to the Library's notice and that the Library will co-operate with the Publisher to prevent further abuse. Though the Library should not be made responsible for an infringement by an authorised user, it is proper that the Library should be liable if it condoned or encouraged a breach to continue after being notified of the infringement by the Publisher.

Warranties and Indemnities

A warranty is a statement or representation that certain facts are true. Important warranties include that the goods and/or services will perform as promised in the agreement. The warranty that 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 licence. If a licence has no warranty clause or a warranty clause that is ambiguous, the Library could end up paying twice, once to the Publisher and once to the person who claims to own the intellectual property rights. Most commonly this is the author.

An ambiguous warranty is one that says that the Publisher is "to the best of its belief" the owner of the copyright in the Licensed Material. The words "to the best of its belief" create a heavy burden of proof on the Library. How can the Library know what is in going on in the head of the Publisher? The fact that the Publisher honestly but mistakenly believed he was entitled to grant the licence provides little comfort to the Library faced with an angry author demanding compensation. That is why a clear warranty is so important. You would not buy a car from someone who was unprepared to say that he owned the very car he is selling.

Moreover, it is similarly important that the Library obtains an assurance that the Publisher will retain and keep the intellectual property rights for the duration of the licence. The Library needs to know that the Publisher granting the licence will have the authority to do so throughout the term of the agreement. Otherwise, it may find itself having to buy a fresh licence from a new owner.

Publishers have argued that this is unrealistic because of the frequent mergers and take-overs in the industry. Such an argument misunderstands what happens to intellectual property rights on such transactions.

On a merger, the maker (the original contractor/publisher) merges with another body to form a new composite entity. The intellectual property rights held by the maker are not lost (and thus the warranty is not broken) as the rights are retained by the new composite entity which continues the existing contracts in the place of the original publisher.

On a take-over, by contrast, there is no change in the maker of the warranty (only of the ownership of the maker) and so there would be no transfer of intellectual property rights (and therefore no breach). They stay with the original contractor.

Tied in with the provision of the warranty is an indemnity. An indemnity is one party's agreement to insure or compensate the other party against losses and expenses resulting from failures in performance under the contract. The indemnity that is most important for a library is an indemnity from an action by a third party over the intellectual property rights licensed. The indemnity should be drafted to cover all the losses, damages, costs, claims and expenses incurred. It should not be restricted to, for example, the costs of the licence. The potential claims for infringement of intellectual property rights and the costs of defending such claims can far exceed the amount the library originally paid for using those rights in the first place.

An example of a warranty and indemnity clause might be:

“The Publisher warrants to the Library that it has full rights and authority to grant the Licence to the Library and that the use by the Library of the Licensed Material in accordance with this Agreement will not infringe the rights of any third party. The Publisher undertakes to indemnify the Library against all loss, damage, costs, claims and expenses arising out of any such actual or alleged infringement. This indemnity shall survive the termination of this Licence however terminated. The indemnity shall not apply if the Library has modified the Licensed Material in any way not permitted by this Licence.”

Force Majeure

A force majeure is a condition beyond the control of the parties such as war, strikes, floods, power failures, destruction of network facilities, etc. not foreseen by the parties and which prevented performance under the contract. Most licences build in provisions that failure to perform any term or condition by any party under the licence due to a force majeure will be excused and that failure to perform in these circumstances will not be deemed a breach of the Agreement.

Assignment and sub-contracting

An assignment enables a party to release himself from all obligations under the contract and to pass them on to the assignee. In most jurisdictions, commercial contracts are not easily assignable. The case law on assignment is complex and not always certain. In addition sub-contracting is often permitted under general law since the original party to the contract remains liable for the performance of his sub-contractor. In most site-licences you will come across the following clause:

“This Licence may not be assigned by either party to any other natural or legal person, nor may either party sub-contract any of its obligations hereunder, without the prior written consent of the other party, which consent shall not unreasonably be withheld.”

Where libraries want to set up a consortium with an intermediary (whether a new or an existing entity) to whom certain tasks will be sub-contracted, care must be taken to ensure that the Publisher does indeed give written consent. It is easiest to incorporate a reference to that “consent” in the body of the licence.

Such a provision could read along the lines of:

“Nothing in this term shall preclude the Library from performing any of its obligations through an Agent.”

What is meant by an Agent needs to be further explained under the list of definitions. The definition of Agent should not be too specific, in order to allow the Library some flexibility for later changes.

Dispute Settlement

There are several ways to settle a dispute; in the courts, by arbitration and by experts.

Litigation

Neither an arbitration nor an expert clause removes the need for a proper law clause, specifying the legal system that will govern the contract and its performance and interpretation, and for a clause deciding which court shall have jurisdiction in the case of legal disputes.

Litigation through the national courts is suitable for disputes both over fact and law. The judge is paid for by the state. Litigation may be commenced by either party and does not require the agreement of the other. The decision of the court is binding in all cases and there is usually an established appeals procedure.

Arbitration

Arbitration is a dispute settlement through an arbitrator appointed by the parties by contract and not by the state. The arbitrator's fees are usually shared by both parties. It is more private and less formal than court proceedings although it is becoming more formalised. Awards made by an arbitrator are binding on the parties and can be enforced by the court. Appeals are possible.

Expert

Expert Determination is an informal procedure where the parties agree by contract to refer a dispute of fact to an expert appointed by the parties for his resolution. It is not really suitable for any dispute where issues of law are likely to be canvassed. The expert's fees are usually shared by both parties. It is binding on both parties and determinations may be enforced by the court. There is no possibility of appeal, save perhaps in the case of outright fraud or manifest error.

Schedules

Schedules are included in agreements so that the sense of the agreement is not lost or obscured under a welter of details. These usually contain the more detailed provisions of the licence and can be used to "bolt on" lengthy or technical specifications or flow charts. Schedules are a

substantive and integral part of the agreement. There should always be a specific provision in the main clauses about the status of the Schedules. Usually, in licences, the Schedules will include a 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.

You will usually find the Schedules after the main provisions but before the signature of the Library and the Publisher.

Clauses to Avoid

Reasonable and best effort clauses

In the European Union, there are countries with civil law (Roman law) and common law (case law) traditions. The distinction between civil law and common law concepts is even found amongst the states of the USA. For example, the law of the State of Louisiana is dominated by civil law whereas the law of the State of Washington is governed by common law. This distinction is very important for the interpretation of certain clauses of a licence, especially the so-called “reasonable effort” or “best effort” clauses.

The words “reasonable effort” and “best effort” are ambiguous. As a general proposition, doubt as to the meaning of a vital term in a contract will make that clause unenforceable. Common law courts, especially in the UK, are reluctant to engage in guessing exercises over what is “reasonable”. Prices, quantities, time, obligations and performance are among the terms where certainty is vital.

Apparent intention and certainty about the meaning of terms are also requirements under civil law, but of less significance. The courts will give effect to the meaning the parties could and should have attributed to what they have agreed, and to what they could reasonably expect from each other in this connection.

General advice is to avoid badly defined or vague terms like ‘reasonable’ or ‘best effort’. These should be amended and replaced by clear, unambiguous terms and conditions. It is better to be absolutely clear from the outset what the obligations are than to create costs to get a judge to interpret if a specific performance was reasonable or not.

Non-cancellation clauses

More and more librarians tend to give priority to the acquisition of resources in digital format. Non-cancellation clauses in licences intend to prohibit libraries from cancelling their current print subscriptions, taking out a subscription to the electronic copy only or to set a minimum limit

to the number of journals subscribed to or licensed. This qualifies as misuse of a dominant position and should not be accepted and should be deleted from the licence.

Non-disclosure clauses

These confidentiality clauses prohibit libraries from sharing pricing, usage information and other significant terms and conditions of the licence with others. Especially in the case of a consortium, this is an unreasonable request. Publishers should give librarians the opportunity to monitor use, gather the relevant management information needed for collection development and to share this information with others. Needless to say, compilation of usage data must be consistent with the applicable privacy laws. However, it should be borne in mind that there are instances where sharing specific information could harm the publishers' activities substantially. That is why it is important to define in a licence what information is subject to the obligations of confidentiality and what information can be shared freely.

Clauses with ambiguous periods of time

It is important to spell out each period of time in a contract. Loose references to days, months and years in agreements are to be avoided. A week may be 7 days or 5 working days. A year can mean any consecutive period of 12 months or the remainder of a specific year. An easy way to get around this is to define a day, week, month and a year in the list of definitions.

Checklist

Don't sign a licence that:

- isn't governed by the law and courts of the country where your institution is located
- doesn't recognise the statutory rights for usage under copyright
- doesn't grant perpetual access to the Licensed Material
- doesn't include a warranty for IP rights and an indemnity clause against claims
- holds the Library liable for each and every infringement by an authorised user
- has a non-cancellation clause
- has a non-disclosure clause
- has reasonable and best effort clauses
- has clauses with ambiguous periods of time
- doesn't allow for sub-contracting to an Agent
- hasn't got a licence fee that is all inclusive

Resources and further reading

Useful documents which focus on licensing principles:

Dutch/German Licensing Principles, 1997

URL: <http://cwis.kub.nl/~dbi/english/license/licprinc.htm>

Evaluation and recommendations on contracts and licences by Emanuella Giavarra, 2000 (TECUP project report D4.5)

URL: http://gdz.sub.uni-goettingen.de/tecup/d4-5_1fv.pdf

Guidelines for negotiations by libraries with rightsholders by Emanuella Giavarra, 2001 (TECUP project report D6.5)

URL: http://gdz.sub.uni-goettingen.de/tecup/d6-5_4fv.pdf

IFLA Licensing Principles, 2001

URL: <http://www.ifla.org/V/ebp/copy.htm>

Statement of Current Perspective and Preferred Practices for the Selection and Purchase of Electronic Information of the International Coalition of Library Consortia, 1998

URL: <http://www.library.yale.edu/consortia/statement.html>

TECUP Memorandum of understanding 2001 (TECUP project report D6.4)

URL: <http://gdz.sub.uni-goettingen.de/tecup/mou.pdf>

Towards Consensus on the Electronic Use of Publications in Libraries – strategy issues and recommendations by Professor Thomas Dreier, 2001 (TECUP project report D6.6)

URL: <http://gdz.sub.uni-goettingen.de/tecup/towacons.pdf>

Model licences

UK Model NESLI Site Licence

URL: <http://www.nesli.ac.uk/nesli-licence.html>

Model standard licences for use by publishers, librarians and subscription agents for electronic resources prepared by John Cox Associates

URL: <http://www.licensingmodels.com>

CLIR/DLF Model License - Liblicense Standard Licensing Agreement

URL: <http://www.library.yale.edu/~llicense/modlic.shtml>

URL European mirror site: <http://mirrored.ukoln.ac.uk/lib-license/modlic.shtml>

Conclusion

Negotiating the price of a licence alone is not enough. We hope that this guide will help you when you are negotiating a licence. Awareness of the type of pitfalls and the issues that arise go a long way towards the negotiation of a better licence for your institution. The resource list provides further reading. However, legal advice should always be sought before you sign a licence.

Good luck!

Emanuella Giavarra, LL.M
Chambers of Prof. Mark Watson-Gandy

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