



MARCH ISSUE2016

RESEARCH PAPER

Times International Journal of Research

A creative Journal for Research

ISSN No.: -2349-4867

LICENSING OF ELECTRONIC RESOURCES: A HARD NUT TO CRACK IN COLLECTION MANAGEMENT

AUTHOR

Tarseem Singh

Assistant librarian

University of Jammu

Email: tarseem9999@gmail.com

ABSTRACT

Electronic documents in varied forms are gaining popularity in contemporary society in preference to the print documents and their presence is being felt in every library as replacement or supplement to the print resources. Like print resources, electronic and digital resources are expensive and consume large portion of library budget. Now the library doesn't have the physical copy of the materials and hence there is no ownership. Publisher of electronic information product no more sell their product to libraries instead provide the access to their services and product under license. E-journals and now ever-growing demand for e-books has brought with it number of challenges for libraries.

KEYWORDS

Electronic resources, license and licensing agreement, collection management, contract, copyright



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INTRODUCTION

Today the collection development in the library is no more confined to printed resources. Digital and electronic resources are becoming necessary and inevitable information resources. In the present era library without these modern information resources is unimaginable. Libraries are under great pressure to involve the maximum number of digital/electronic resources in its collections so as to maximise the access to information. The dynamic nature of these resources is fascinating the users and libraries alike. Ease of access, anywhere (in library or out of library) any time (24, compatible with new devices (computer, ipad, smart phone) and less physical space for arrangement and storage are some of the significant advantages of electronic resources over their print counterpart. Nevertheless it is equally true that the collection management of electronic resources is not as simple as collection management of print resources. Librarians working with electronic resources are confronting the new challenges thrown open by the electronic resources. Some of the challenges are akin to print resources but need additional expertise in discovery and selection, acquisition, maintenance, evaluation of collection, renewal and cancelation.

The practical procedure for management of electronic resources is similar to their print counterpart. The life cycle of the electronic resources or the six point technique for the management of electronic resources as suggested by Emery Jill and Stone (2011) is akin to the production and management of print resources. From librarian point of view the sequential expression of life cycle of the information is like: production; discovery; trial & testing; selection; subscription/acquisition; access facilitation; usage statistic/cancelation/renewal. It is pertinent to mention that baring the discovery, and trial & testing all other stages of the life cycle of electronic resources is impacted by licenses associated with the product. In the words of K, Kataria, & Ram (2013) “acquisition of the selected materials is very straightforward as it follows the print resource acquisition pattern, but the important aspect of e-resources acquisition is the terms and conditions of e-resources, license agreements, signing of licensing and more importantly reading and reassuring the



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Legal finer prints of license agreements (p302).” The producers of the electronic resources have different sets of terms and conditions for their customers and usually are quite lengthy and difficult to comprehend. It is rightly observed by Arms (1998) “that the library may be unable to identify all the rights and restrictions that might apply to some items. Carrying out a full search for access restrictions that might possibly apply to every item is expensive and time consuming. Even after a thorough search, vital information may still be missing or undiscoverable.” Collection management in library was always a difficult task, but the proliferation of electronic resources and the condition of license associated with them have made the task more cumbersome.

WHY WE NEED LICENSE

The publisher of scholarly publication and the librarian work job has ushered in to a fast changing and complicated arena. The rights granted by copyright to the author/publisher are balanced by the exemption clause (like fair use) provided for the users as well as institutions like libraries. The playing field which is somewhat considered as ‘fair’ and ‘balanced’ is now tilting more in the favour of digital publisher. Although the digital and electronic resources are also covered under the Copyright Acts of every country, but the factors which are responsible for the change are; enactment of Digital Acts like Digital Millennium Copyright Act; and WIPRO conventions ;and the new business model adopted by the creator of electronic resources. Under these new provisions ‘First Sale Doctrine’ and ‘Fair Use Doctrine’ are either ignored or curtailed. Under the new business model, the creator of digital resources especially electronic journals and databases no more consider the electronic resource analogy to print and provide the services to the libraries on lease for certain amount and annual maintenance cost for limited period as specified in license. To know the difference and similarity between copyright and license, Ann Oakerson, gave the short description as:



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“Copyright represents a set of general regulations negotiated through statutory enactment. The same laws and guidelines apply to everyone in the country.” Whereas :licenses are contracts... [that] represent [a] market-driven approach to such regulation. Each license is arranged between a willing surveyor and willing licensee, resource by resource. The owner of a piece of property is free to ask whatever price and set whatever conditions the market will bear” (Evans, 2004) p.535 .In the digital environment Okerson, (2000, p. 687) noted that:

“Information world will find itself increasingly operating under a series of multiple intertwined licensing arrangements. Authors will negotiate their own licenses, giving publishers specific limited rights to produce and distribute content. Then publishers will license third parties to gain access to their information- e.g., abstracting and indexing services- and re-deliver it to customers. In turn, libraries and consortia of libraries will license content for their users. In this way, there will be established a new kind of circle of rights, beginning with the academic community as creators of ideas and ending with academic community as consumers of ideas.”

CONFLICTING VALUES

The institutions like publishers and libraries have some values attached to them. The relationship between publisher and library is mutual and symbiotic. Inter-dependency determined the existence and survival of both. Libraries depend upon publishers for qualitative scholarly information resources and publishers depend upon libraries for the revenue and publicity. The bone of contention between libraries and publishers is their societal duty and economical considerations’ there-by both are adamantly justifying their values without considering the others, and trying to secure maximum benefits out of the legal provisions available. According to Professor Laura Gasaway,



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“The primary values of libraries and digital content providers relating to copyright are many. The core values of authors and publishers relating to copyright include: (1) compensation for the creation and production of their works, (2) ability to control their works, (3) authentication and recognition of their works, (4) broad marketing of their works, (5) promoting strong intellectual rights, and (6) viewing the fair use as an affirmative defence to copyright infringement. Libraries’ core values regarding copyright law include: (1) recognition of public libraries as educational institutions, (2) providing information to people, (3) providing information on all sides of an issue, (4) promoting rights of users of copyrighted work, (5) ability to identify and locate information, (6) recognition of the importation of public domain as a repository of information, and (7) viewing the Fair Use Doctrine as a right of a person to use a copyrighted work. The collective good of society shared by libraries, publishers, and producers relating to copyright include: (1) the importance of an educated population, (2) the support of entrepreneurship, (3) access to public libraries, (4) the importance of the public domain, and (5) Public access to information’ (Gasaway, 2000).

The differences between the core values of library and publisher lead to the different approaches. Digital content providers generally feel that they are not charitable institutions and favour a pay-per-use distribution system based on the licensing agreement. On the other hand libraries demanding First sale Doctrine and Fair Use Doctrine in support of teaching and research activities, and to promote public access to information and preservation (Chou & Zhou, 2005).

LICENSING AGREEMENT

The publishers considered the e-resources different from print resources and don’t prefer to sell the same, rather provide access to them under lease of contractual terms and condition after taking charge for them for limited period. The argument of publishers is valid to some extent as it is very easy to reproduce and distribute the electronic resources there by



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There is every possibility of theft/plagiarism/infringement and loss of revenue for the investment they have made. A license of use is provided to libraries after a contract is signed between provider and library representative. Contract means a written agreement between two or more parties which is enforceable by law. A contract consists of ;(i) an offer; (ii) acceptance of the offer; (iii) valid (legal and valuable) consideration. Contracts may cover products, goods, of services for the fixed period. The publisher or vendor (licensor) offers a product or services with terms and conditions set forth in the contract, the libraries (licensee) accepts the offer and pay fee. License or licensing agreement is legally binding form of contract between publisher/vendor and library, where by each party acquire certain rights and duties in respect to each other.

According to Min Chou and Oliver Zhou “licensing agreements are essentially a type of private legislation launched by the digital content developers who believe that the [U.S.] copyright law has not provided adequate protection for their intellectual property rights” (Chou & Zhou. 2005. p.8). Since this arrangement is creation of e-publishers and developers the main objective of this development is protection of interest of developers. By very nature they are more inclined towards the creators of digital and electronic content.

TYPES OF LICENSE

There are number of different categories of licensing agreements. Chou and Zhou defined the three main types of licensing agreement: statutory or compulsory; shrink wrap; and negotiable licensing agreement (Chou & Zhou, 2005). Shrink wrap or click-on licenses generally come with the computer software or other digital products. These licenses are either written on the packet containing the product or appear on the computer screen whenever somebody starts installing the software. The user has the options of either accepting the terms and conditions of the producer by clicking ‘I Accept’ or not using the product. For digital and electronic resources the libraries and publishers prefer negotiable licensing whereby both the parties deliberate and agreed upon the terms and condition acceptable to both parties. Under such type of licensing it is not necessary for the libraries to accept the terms and



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Condition of provider. They have the privilege of bargaining on number of issues which are not acceptable or against the basic principles and policies of libraries.

Since licensing agreement is a part of contract and is legally binding on both parties. In a sense it is a legal document and should contain various clauses of agreement, i.e.,

- Description of the product and services
- Defining all potential disputable terms
- The terms of use (e.g., prohibitions against or permission to use the e-content in interlibrary loan and course reserves)
- Defining authorised users and any limitations on walk-in use and off-site access
- Specification of the process of authorizing and authenticating authorised user
- Setting the pricing model (which might be based on FTE users, pay per use, or number of concurrent users), often as an appendix
- Specifying the term or duration of the contract and any prohibitions against cancellation
- Describing the renewal and cancellation process
- Specifying the contractual obligations of both the parties and the penalties if obligations are not fulfilled.
- Specifying whether the library has access to the content if the contract is terminated and the form that access might take, often called perpetual access (Johnson 2011).

Since licenses are the legal documents and complicated to understand for the person like librarian who may not be familiar with legal language. Guenther, (2000) advised the librarian



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To consider the main points from a checklist developed by the European Copyright User Platform:

Don't sign a license that:

- Isn't governed by the law and courts of the country where your institution is located.
- Doesn't recognize 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 authorized user.
- Has a non-cancellation clause.
- Has a non-disclosure clause.
- Have reasonable and best-effort clauses.
- Have clauses with ambiguous periods of time.
- Doesn't allow for subcontracting to an agent.
- Hasn't got a license fee that is all inclusive.

In addition to these there are number of resources both in print and electronic form with cost as well as free availability for the librarian to guide them for better negotiation. Some of the valuable resources are as under:

- Copycense: Provides research, analysis, news, and commentary about the intersection of law and information, with a particular focus on copyright and licensing. This online publication includes deep archives on issues related to libraries and licensing.
- Copyright & Fair Use: A joint effort between Stanford University Libraries and Nolo Press, this searchable portal provides statutes, decisions, commentary, and research aids related to copyright.



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- Copyright resource guide: This Indiana University site is intended to guide users with copyright-related questions to the most appropriate university resource. Much of this information is also recreated at the new Web site of Columbia University Libraries Copyright Advisory Office
- Dangerous Terms: A User's Guide to EULAs; While this February 2005 guide, published by the Electronic Frontier Foundation, focuses on prohibitive contract clauses that appear in software end-user license agreements (EULAs).
- International Federation of Library Associations and Institutions: This 2001 resource presents a "set of basic principles that should prevail in the contractual relationship and written contracts between libraries and information providers." < <http://liblicense.crl.edu>>

CHALLENGES IN LICENSING NEGOTIATION

For public institutions such as libraries negotiation of license for electronic resources is very time consuming. Mostly the electronic resources come in bundles and packages having collections relating to different fields. As such the decision regarding addition or cancellation can be taken only after deliberations with the different stake holders. More over low budget, annual maintenance cost, audit of the expenditure (due lack of clear price of package) also add miseries for the libraries. Once the library came out of these shortcomings the real challenge of negotiation of license began.

According to Timothy Shipe, the major difficulties in licensing agreement are: an inability to conclude an agreement due to irreconcilable disagreement; an inability to modify license terms that impose unusual restriction; and inability to negotiate the license terms that grant archival access (Shipe, 2005). With regard to various legislative provisions, Gasaway (2000), observed that both librarians and publishers and producers are guilty of misstate the law and make overstatements about the horrors in the digital world.



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CONCLUSION

Management of electronic resources is a complicated task which requires lot of expertise and knowledge regarding not only the procedures and functions of the library but also the various procedures and tasks involved in life cycle of electronic resources, their different business models, and preservations of electronic resources. Managing licenses further complicate the job of librarian. It itself is a complete collection management task, because in electronic atmosphere the maximum of the collection management activity are governed by the terms and conditions of license. Since the issue of licensing of electronic resources is relatively new and complex, very few library professionals have the professionalised understanding of the legal terminologies and intricacies. There is no doubt that under the licensing regime the producer of digital and electronic products are in a better position to have control over the copyrighted works. For the survival of libraries and protection of their core value, the immediate remedy is the better negotiation and fight for the continuation of the Fair Use doctrine and First Sale Doctrine in digital and electronic also. Libraries should always insist for the negotiable licenses whereby they can deliberate on the issues which are against their principles and policies. Hence it is imperative to make the librarians well versed with the legal regime concerning the resource management so that they are in a position to better acquaint their staff and users regarding the proper working of the licensing terms.

REFERENCES

1. Arms, W. Y. (1998, February). Implementing Polices for Access Management. D- Lib Magazine.
2. Chou, M., & Zhou, O. (2005). The Impact of Licenses on Library Collections. In A. Fenner, *Managing Digital Resources in Libraries* (pp. 7-24). New York: Haworth Information Press.



MARCH ISSUE2016

RESEARCH PAPER

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A creative Journal for Research

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3. Evans, G. E. (2004). Developing Library and Information Center collections. Colorado: Libraries Unlimited.
4. Gasaway, L. N. (2000, March 23). Values Conflict in the Digital Environment: Librarians versus Copyright Holders . Retrieved from University of North Carolina at Scapel Hill Web site: <http://www.unc.edu/~unclng/Columbia-article3.htm>
5. Guenther, K. (2000, March 24). Building Digital Libraries: Making Smart Licensing Decisions. Retrieved from infotoday Web Site: <http://www.infotoday.com/cilmag/junoo/guenther.htm>
6. Jill Emery & Stone, G. (2011, November). Can We Agree TERMS? Shaping Techniques for Electronic Resource Management as a Model of Best Practice. Retrieved from <http://www.dlib.org/dlib/november11/11inbrief.html>
7. K, J. P., Kataria, S., & Ram, S. (2013). Dynamics of Managing Electronic Resources: Electronic Resource Management System (ERMS) Initiatives. DESIDOC Journal of Library & Information Technology, 300-305.
8. Okerson, A. (2000). Are We There Yet? Online E-Resources Ten Years After. Library Trends, 671-691.
9. Shipe, T. (2005). Travels into Several Remote Corners of Information Universe: A Voyage to the Department of the Houyhnhnmists, or, Licensing Issues and Integrated Collection. In A. Fenner, Managing Digital Resources in Libraries (pp. 25-34). New York: The Haworth Information Press.