Chapter 8

Licensing
8.1. Introduction

A major area of concern for libraries and publishers alike is the licensing of e-journals. The very idea of a “license” to journal content is a new concept. When libraries bought printed journals, they paid their money and got their paper, which they then owned and bound, archived, sent out for interlibrary loan, placed on reserve, and from which users photocopied single copies of single articles, in accordance with fair use copyright law. Now, because electronic copy is so easily duplicated and distributed, it has become more important to protect profits by restricting access, and producers of information are requiring “licenses” to access the content. Publishers and consumers now enter into license agreements that regulate the ways in which the content may be used, and by whom. But it can be difficult to navigate the variety of licenses that are proposed.

8.2. Licensing and Copyright

Libraries have traditionally provided access to information for their users under the guidance of copyright law. The advent of photocopying in the 1950s, however, initiated a host of new challenges for libraries, commercial publishers and authors, and of course, library users (Davis, 1997). The U.S. Copyright Revision Act of 1976 was supposed to address the rights of authors in relationship to the emerging copying technologies. But by 1978, advanced copying and other technologies had become widespread that publishers and authors began to seek protection for their rights under contract law rather than copyright law.

In the mid-90, the abundance of scholarly and scientific publishing in electronic form was putting new demands on the way libraries and publishers conducted their business together. Where traditional print materials were distributed by sale in an economy governed almost exclusively by copyright statute, electronic resources were already being distributed under other economic and business models, chiefly those governed by the special kinds of contracts commonly called licenses. As the number of available electronic resources delivered by publishers and vendors was growing rapidly and seemingly without end, librarians and publishers around the world were stumbling towards an understanding of this business environment (Okerson, 1999). Licenses are
becoming standard business practice for providing access to and use of electronic information in library settings (Brennan, et al, 2002). Also, information providers who need to protect their investments are turning to licenses to define and control the use of their products.

8.3. Licensing of Electronic Journals

“Licensing” is one of the three key roles that Odlyzko (1999) predicts will remain for librarians once they have been dis-intermediated from their role as custodians of the information collection in its print incarnation. (The other two roles are in reference and enforcing access restrictions.) He also points out that there will be competition for these roles from information specialists.

Hamill believes that licensing is in a state of flux as publishers try to anticipate the effects of their licensing arrangements on revenue. Rights of access for libraries vary from allowing access free of charge to all computers in the building where the print copy is normally shelved, to allowing access to all computers within an institution's site, to recognition of access for all bona fide members of a consortium of libraries regardless of the means of connection to the online journal. The definition of 'site' varies with different publishers (Hamill, 1999).

The Yale University site includes freeware software, The LibLicense Guide to Digital Licensing. This is a “software program designed to assist in the drafting and negotiating of license agreements (also called “contracts”) for digital information. The software will guide the user through the major clauses commonly encountered during the negotiation of licensing agreements. Based on information supplied by the user, the LibLicense software supports the creation of a draft license agreement. The user will be able to edit the draft in the rich text editor included with the software, or with a word processing program” (http://conferences.alia.org.au/shllc1999/papars/hamill.html).

There are major management challenges in dealing with such a variety of licensing arrangements. The value of trying to manage licenses which offer access only
within the same building where the print subscription is housed is hard to perceive unless such access is used simply to back up lost issues or copies at binding.

Some license agreements restrict the use of electronic journals for the supply of inter-library copy requests. Odlyzko’s explanation for this is: “Obtaining a copy of the paper article is slow, cumbersome, and expensive, and this serves to deter wide use of interlibrary loans as substitutes for owning the journal”. He also suggests that “copyright litigations of the last two decades have practically no economic value to publishers aside from restricting photocopying and thus maintaining the subscriber base”. At least one electronic journal provider allows copying for inter-library supply but requires detailed records be kept and submitted on what copying was done for which library (http://conferences.alia.org.au/shllc1999/papers/hamill.html).

The complexity of dealing with a large number of variable licenses is challenging the journal subscription agents who are coming up with new services to add value to their traditional subscription agent functions.

### 8.4. Consortia Licensing

The technological developments in scholarly publishing and the pricing models of the publishers display new opportunities for libraries to give their users instant access to information. A number of publishers offer consortia access to the whole range of their journals. That is, every member of the consortium will have electronic access not only to the journals currently subscribed to but all the journals. Consortia purchasing offers for the single library the opportunity to get access to more journals than they currently have subscriptions to, thus eliminating the continuous cancellation operations. For the consortia members -the specific group of libraries- it offers reduced costs in the interinstitutional document delivery processes for those specific journals.

Bjoernshauge (1998) believed that there are a number of obstacles for the libraries to take advantages of this development. Firstly, there is the ever present funding problem. Entering consortia requires initial investments in licenses and information and communication technology. Secondly libraries are not prepared to cash in the savings offered by not handling the print edition of the journals. Their work procedures are still
centered around the physical document, staff are not trained in handling electronic documents etc. Therefore many libraries are reluctant in entering consortia agreements especially where publishers impose payments for off-consortia delivery of documents, either in electronic or paper format. Thirdly there will often be investments to be made in local - consortium based - central hardware set up, mounting of data, development of interfaces, administration of access etc. However those problems are precisely to be solved not by the single library but in cooperation between the participating libraries.

Informatics India with initiation from three different educational institutes has successfully developed three consortium models in India. These are SNDT University consortia of Library and Information Science Abstracts (LISA) with other six universities, Secondly Forum for Resource Sharing in Astronomy and Astrophysics [FORSA] consortia of Kluwer E-journal consortia program with five institutes and finally IIMs consortia of 33 Kluwer journals in management sciences.

The Ministry of Human Resource Development (MHRD) as per the recommendations of expert group headed by Prof Balakrishnan of IISc has set-up “Consortia-based Subscription to Electronic Resources for Technical Education System in India”. This consortia is available in three models. Presently all the IIT’s, IISc, National Institute of Technologies (NITs) and Indian Institute of Management’s (IIMs) are its members. The consortium being an open-ended proposition, welcomes institutions to join it on their own for sharing maximum benefits it offers in terms of lower subscription rates and better terms of agreement with the publishers. All electronic resources being subscribed shall be available from the publisher’s Website. The membership of the consortium is open to any Private or Government-funded Engineering /Technological/Educational institutions/Universities for one or more electronic resources. The consortium will charge nominal annual fee for its services.

In UK, the British Columbia Electronic Library Network (ELN) is a partnership between the Province of British Columbia and its post-secondary libraries. ELN’s purpose is to develop, promote and maintain system-wide mechanisms that allow post-secondary libraries to meet the expanding information needs of the province’s learners and educators, at the lowest possible cost.
It may be noted here NESTLi2 (The National e-Journals Initiative) is an initiative in UK regarding licensing of electronic journals. NESLi2 is the UK’s national initiative for the licensing of electronic journals on behalf of the higher and further education and research communities, 2003-2006. NESLi2 is a product of the JISC (Joint Information Systems Committee) and is a model license used by JISC staff or its agents in negotiations with publishers for JISC journal agreements.

The Model NESLi2 License for Journals takes into account that Content Complete Limited has been appointed as the negotiation agent for NESLi2. It was approved in September 2002, after changes were made to reflect JISC replacing the NESLI Managing Agent in negotiations, and to allow for the fact that the license no longer covered service delivery. Further revisions were approved by the Journals Working Group in April 2005, bringing the license up-to-date with latest developments in the delivery of teaching and learning and the dissemination of research activity in the academic community (http://www.nesli2.ac.uk/).

8.5. Role of Aggregators in Licensing

Historically, aggregating services have been used by libraries and publishers for many years. These “middlemen” services include subscription vendors, such as EBSCO, who typically perform such functions as handling orders, billing, payments, renewals and cancellations. Publishers use fulfillment houses to manage subscriptions and distribute print publications. Libraries joining together in consortia to leverage buying power is another form of aggregation. Libraries and publishers both have realized cost savings and efficiencies by using aggregators.

The electronic environment has presented publishers with a new way to aggregate (without the middlemen) by bringing content together and offering all of a publisher’s electronic journals to libraries as a package. With the emphasis in the electronic environment on the aggregation of content rather than services, many traditional aggregators, in danger of being disintermediated, have redefined their businesses. The traditional indexing and abstracting services have enhanced their databases by licensing the rights to include full text. Subscription vendors have created new lines of business
providing access to large numbers of journals from a variety of publishers. Some primary publishers, such as Elsevier Science and Academic Press have decided to take on the role of aggregator, maintaining control of their content and its distribution. Many scholarly societies continue to aggregate their own titles as they did with their print journals (for example, ACS, ACM, and IEEE) (Case, 2001).

Aggregations by commercial publishers, often called the “Big Deal”, are marketed by publishers as a way to cap inflationary journal prices. The library can usually buy additional print copies for a discounted price and cancel some print copies for a small savings. But the content is now bundled so that electronic subscriptions cannot be cancelled; or, if they are, the realized savings is very small. These packages are usually multi-year deals, so significant portions of a library's budget are committed for a period of time, with little or no flexibility.

In 2002 a survey conducted by the Association of Research Libraries (ARL) revealed that 65% of responding libraries with subscriptions to Reed Elsevier’s electronic journals also subscribed to their bundled offering, ScienceDirect, in a multi-year deal. In a 2003 survey of 57 libraries, 22 indicated that they were planning to cancel or considering canceling a bundled package (Case, 2004).

8.6. Commercial Publishers’ Licensing Policy

Following subsections present critical study of the licensing policies of commercial and society publishers covered in this research.

8.6.1. Elsevier

In 1990s, Elsevier conducted two projects regarding licensing of electronic resources viz; TULIP and PEAK. A brief explanation of these two projects is given here.

1. The University Licensing Program (TULIP) (1991-1995)

During the late 1980s Elsevier was in discussion with several libraries about possible experiments in electronic journal distribution. In 1991 it started the TULIP project (The University Llicensing Program) with nine U.S. university libraries (one of
which was the nine-member University of California system). This was the largest experimental project at that time to test the networked desktop delivery of e-journals. Pre-Mosaic, the project was based on delivery of the journals to each institution, which would mount them on their campus network and make them available using individually-developed software. Initially the project delivered more than 40 journals in materials science, doubling to 80 by project end. Over 4000 pages of scanned text was delivered every two weeks. TULIP taught enormous technical lessons in local systems, delivery and access tools and in the use of e-journals at the desktop.

As the TULIP program was ending, Elsevier made commitment to create a commercial service on the TULIP scanned-image, locally-hosted model. All 1000+ Elsevier Science journals were scanned and made available on a subscription basis. This program continues today under the name ScienceDirect OnSite (SDOS) and, now delivering both PDF and SGML files, allows for local ownership and customization of e-journal services (http://www.kb.nl/kb/sbo/dd/dd_links_en_publicaties/publicaties/eskb-e-journalsates4_20aug02.pdf).


One of the areas not well explored in the TULIP project was the economics of e-delivery and the pricing of e-journals. The University of Michigan, a TULIP leader, wanted to continue this research and the PEAK project was established to test three different pricing models. Under the direction of University of Michigan faculty, PEAK involved twelve institutions, small and large, academic and corporate. While in the end it was felt that the experiment was not definitive in its findings, it did establish certain principles that have influenced subsequent pricing models (It may be noted that more explanations regarding the TULIP and PEAK are given in chapter five).

In 2003, Elsevier offers multi-year licenses, which are available to help libraries easily, plan for and manage their subscription budgets. Elsevier Science offers anyone the flexibility to select from a variety of licensing and purchase options – all designed to ensure that users’ product portfolio is meeting the requirements of their institution. For subscription-based products, licensing fees are typically based on the type and size of an
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18. If any clause or clauses of this Agreement would result in this Agreement being prohibited pursuant to Article 81 of the Treaty of Rome, then it or they will be deemed to be omitted. The parties will uphold the remainder of this Agreement and will negotiate an amendment which, so far as legally feasible, maintains the relative economic positions of the parties.

19. The failure of either party to require performance by the other party of any provision of this Agreement will not affect its full right to require such performance at any subsequent time; nor will the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.
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19. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

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18. The current APA data fee schedule is available from the Licensor in printed form and online. Licensor shall provide a copy of revised annual fees to the vendor at least 90 days before the end of the calendar year.

8.8. Summary

Licenses are becoming standard business practice for providing access to and use of electronic information in library settings. Publishers and consumers now enter into license agreements that regulate the ways in which the content may be used, and by whom. The Information regarding licensing policies of the ten studied publishers is summarized in Table 8.1.
### Table 8.1: Licensing Policies of Publishers

<table>
<thead>
<tr>
<th>SL No.</th>
<th>Name of Publishers</th>
<th>Authorized Users</th>
<th>Walk-In Users</th>
<th>Band of Reproduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Elsevier</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>2</td>
<td>Taylor &amp; Francis Group</td>
<td>YES</td>
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<td>3</td>
<td>Kluwer Academic Publishers</td>
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<td>4</td>
<td>Blackwell Publishing</td>
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<tr>
<td>5</td>
<td>Springer-Verlag</td>
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<td>6</td>
<td>Oxford University Press</td>
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<td>7</td>
<td>Cambridge University Press</td>
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<td>8</td>
<td>IEEE</td>
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<td>MCB University Press (Emerald)</td>
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<td>10</td>
<td>American Psychological Association</td>
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As it is seen from Table 8.1, all publishers have defined “authorized users” in their licensing agreements and all of them banded reproduction of their journals. Except three publishers viz; Kluwer, Cambridge University Press and Emerald all other publishers have defined walk-in users.

Generally, license agreements of these ten publishers are very similar and all of them followed a similar pattern. There is no significant difference between the licensing agreements of commercial and society publishers.