

# Electronic Information Resource Optimisation in Academic Libraries: A Comparative Study on Licensing Provision of Commercial Publisher

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## ABSTRACT

Electronic information resources are increasingly become an important component of the collection-building activities of libraries. This paper attempts to understand how far the licenses of commercial publishers support resource optimisation in general and what other important issues that are usually ignored by publishers, knowingly or unknowingly, but are essential for better resource optimisation. Five international publishers namely Elsevier, EBSCO, Sage, Springer, and Taylor & Francis were identified and analysed their agreements that are available in public domain with some model agreements like Liblicense model and model license developed by John Cox Associate. Study indicates that core part of the negotiations still remain price, IP access, display, ILL/document supply, etc. while important issues like perpetual access, archiving, self-archiving, copy of individual articles and share the same for non-commercial use by authorised users were minor issues of the contract. Furthermore, most of the obligations of the publishers that are identified as core issues in Liblicense model are also absent in commercial publishers' license. A greater awareness of this to library managers is essential. They must be acquainted with the clause of the license agreement of commercial publishers and must negotiate to that extent so that the access should be uninterrupted.

**Keywords:** Electronic information; Resource optimisation; Licensing; Academic libraries; E-content; Perpetual access

## 1. INTRODUCTION

Generally, the term resource means “a stock or supply of money, materials, staff and other assets that can be drawn on by a person or organisation in order to function effectively (Oxford University Press 2013)”. In the context of libraries, library resources are basically sources of information. Traditionally, these resources were mostly printed documents, but with the advent of the internet, digital sources of information have become prevalent. In today's internet dominant world, electronic information resources play a major role for quality research. These resources are well accepted among academic communities because of their 24x7 hours accessibility, as well as features like linking to related information/page, graphics, sound, video, and animation. These digital sources of information include, but not limited to, online libraries and journals, online encyclopaedias like the Wikipedia, blogs, video logs like the YouTube, etc. Even movie clippings especially from history have played a large role in modern research, and hence are classifiable under 'library resources'. Because of the fact that these resources don't take up more space on library shelves and they are more durable than print resources, they are become important sources of information in modern libraries. Furthermore, in terms access, such digital resources

allow more than one user to access information at the same time, depending on the license agreement.

Resource optimisation in general, aims to discuss how the open access environment can be promoted and how the collection development may be facilitated by integrating open access resources with institutional (access through consortia) and library resources (purchase e-resources). Resource optimisation presents a new approach for optimising resources. The performance is measured by improving the quality collection development, optimum utilisation of resources (man-machine-materials) and timely delivery.

Much has been written in the Indian library literature about the move from print to electronic serials, use of electronic resources by various level and types of users, and the debate over usefulness of print over non-print resources. However, there is little information in the literature that explores the electronic resource management activity, licensing, perpetual access, archiving and how these concepts are well conversant in Indian academic libraries.

## 2. ELECTRONIC RESOURCE MANAGEMENT

In general sense, electronic resource management refer to procedure adopted by modern libraries for selection (including identification of products and their trails), licensing (including negotiation of license, technical evaluation), implementation (including technical processing and promotion) and maintenance

and review. To develop a balanced digital resources for libraries and its optimised use, the selection and licensing phases are crucial. In licensing phase, the librarians negotiate the license with the supplier or vice-versa. This activity includes the agreements relevant to the clauses for perpetual access and for permanent archival copy. Also in this phase, other technical conditions like economic and legal sections of the license agreement are evaluated.

## 2.1 Licencing of Resources

In context of electronic resource, a license agreement is a signed contract between publisher/aggregators/service providers (commonly termed as licensor) with the libraries (or licensee) which allows the library's users to access the electronic information for a specified period of time among and a specified number of users. By this mechanism, libraries acquire information resource on rent without acquiring ownership (and without 'capitalising'). In some cases, the accessibility remains functional even after contract expires, in most cases archival access is restricted. These licences also mention how the information can be used for non-commercial educational, or research purposes; at what extent information can be stored, printed or downloaded, and transmitted among users, who is liable for knowingly or unknowingly violations or misuse of the information by library users, whether the information will be permanently accessible, and the charges for accessing the information.

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## 2.2 Licensing of E-Contents- International Scenario

The American Library Association<sup>1</sup> released Principles for Licensing Electronic Resources in 1997. In the same year, The Dutch Association of University Libraries and the German Association of Research and University Libraries in North and Middle Germany<sup>2</sup> adopted a set of licensing principles entitled Guidelines and Checklist for Librarians. This formed the basis for development of International Coalition of Library Consortium's (ICOLC)<sup>3</sup> Statement of Current Perspective and Preferred Practice for the Selection and Purchase of Electronic Information. By using available principles, in 1999, Ligue Des Bibliothèques Europeennes de Recherche (LIBER)<sup>4</sup> developed European Licensing Principles. In 1999 also, Publishers Association/Joint Information System Committee (PA/JISC)<sup>5</sup> designed a model entitled Model Electronic Site Licensing

Initiative (NESLI) to support license negotiation for higher education in UK.

Another major breakthrough was the creation of LIBLICENSE project in 1997 by CLIR/DLF<sup>6</sup>. The "LIBLICENSE Model License aims to be format-neutral, i.e., to be applicable not just to e-journals, but also to other scholarly electronic formats such as books, databases, reference works, AV material, and so on"<sup>6</sup>. In November 2014, a totally revised and recast model license has been developed by discussing and collaborating with numerous stakeholders.

In 2000, the Committee on Institutional Co-operation (CIC)<sup>7</sup> – a consortium of 12 major universities of US developed a Statement on Standardise Agreement Language for vendors negotiating with members of the consortium. This is not a model license but rather check-list for negotiation.

John Cox Associate<sup>8</sup>, an international publishing consulting firm that specialist in licensing developed a suit of four generic models license and make them available in public domain in 2000. These models are for single institution, consortium, public libraries and other special and corporate libraries. This project was sponsored by four international subscription agents namely Ebsco, Harrassowitz, RoweCom and Swets Blackwell.

California Digital Library (CDL)<sup>9</sup>, recently has developed an important model license incorporating current best practices in licensing and feedback from University California librarians, licensing staff, attorneys, peers, and CDL colleagues. In these licensing clauses like text and data mining (TDM) section clarify that authorised users may not only engaged in text and/or data mining activities for academic research purposes but also share the results with others so long as the purpose is not to create a product for use by third parties that would substitute for the licensed materials.

## 3. LITERATURE REVIEW

There is not much of academic works available on commercial licensing policies. Most of the available literature are in form of reports and discussed on either problem of archiving or consortium purchase policies. For example, Giordano investigates the problems perceived by academic libraries for archiving and preservation of electronic journals, and discusses the organisational practices implemented in this area. Scigliano<sup>10</sup> on the other hand, investigates the cost-benefit analysis for an electronic product acquired by an academic library consortium.

Since the scope of electronic resources has broadened in new century, significant concern on licensing for e-books has started growing. One of the earlier studies conducted by Croft<sup>11</sup>, discusses the several models of licensing and examines the inter-library loan clause of various libraries. She also discussed the importance of model licence for libraries and vendors. Dygert & Langendorfer<sup>12</sup> similarly also explains the key components of a license agreement, including examples and sample clauses.

## 4. OBJECTIVES

The overall objective of this paper is twofold:

- To understand how far the licenses of commercial

publishers support resource optimisation by comparing licensing provision with models licenses; and

- To identify license issues that are usually ignored by publishers knowingly or unknowingly, while licensing but are essential to be considered for better resource optimisation.

## 5. METHODOLOGY

Since the intention of this study is to compare the provision of clauses in licensing for digital access by international publisher/licensors, we have attempted to gather the license agreement of five selected international publishers that are available in public domain. These publishers are: Elsevier, Ebsco, Sage, Springer, and Taylor & Francis. For this we explore first the official website of these publishers and if it was unavailable at publisher's website, attempted were made to gather the same by accessing website of various reputed universities worldwide. Simultaneously, two important model licenses: *LIBLICENSE* Model License and Model license developed by John Cox Associate were explored. On the basis of these two model licenses we prepare a check-list of various clauses and examine the clauses of commercial publisher's license agreement with this check-list.

## 6. RESULT AND DISCUSSION

The result of our study is elaborately mentioned in Appendix A. In Appendix A we have explained the available clauses in the openly available license of various commercial publishers. In the following section we have attempted to explain only few issues that are important to mention and analyse those issues in contrast with well-known model license namely 'Liblicense'.

### 6.1 Terms and Extent of Mention of Terms in License

Licensing terms & glossaries are useful for librarians to become familiar with the standard layout and terms or clauses within a license. Glossaries are useful tools for definitions of key terms and to understand what they actually mean. While considering the License agreement of various publishers we observed that except license agreement of Elsevier and Springer, other three selected publishers explicitly mention the connotation of terms in the License agreement. The Liblicense model also suggests to explain the connotation of terms while undergo licensing.

### 6.2 Force Majeure

As suggested in Liblicense model "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 Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, labor strikes, and/or any other cause beyond the reasonable control of the party whose performance is affected"<sup>6</sup>. Such provision is available with all license under consideration except the agreement of Ebsco & Sage. The reason behind such absent of clause is beyond the understanding of the researchers.

### 6.3 Perpetual Access & Archiving

According to Liblicense model "Licensor grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were [accessible or subscribed to] during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If the Licensor's means of access is not available, the Licensee may provide substantially equivalent access to the Licensed Materials"<sup>6</sup>. Further this model license also suggests that "Licensor shall provide to Licensee upon request, or Licensee may create, one (1) copy of the entire set of Licensed Materials to be maintained as an archival copy. The archival copy from the Licensor shall be provided without any DRM in a mutually agreeable medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only"<sup>6</sup>. While comparing the provisions of existing license agreements under consideration we observed that such provisions are available slightly only with Sage and Ebsco license.

Model license suggested by internationally reputed library organisations like NESLI, ICOLC, EBLIDA also contained "perpetual access" clauses, but these provisions were unavailable in contract by most of the commercial publishers. The essential clause that took core parts of the available contracts with the commercial publishers were issues like price, IP access, definition of the "authorised users," clauses for displaying and ILL / document supply.

Whether perpetual access will be fee based or free has also mentioned in some model contract. University of California (UC) and the United Kingdom's National Electronic Journals Licensing Initiative (NESLi2) for higher-education institutions state that perpetual access must be free. In contrary, the Canadian National Site Licensing Project<sup>13</sup> states that members will have to pay a fee to the publisher. UC and NESLi2 both however, suggested that three hosting options are acceptable for perpetual access: Access through the publisher's site, the library's site, or some type of central archive hosted by a third party.

### 6.4 Extend of Users Rights

While considering this clause in the license agreement of various commercial publishers, we observed that every publishers allow authorised users to use a reasonable amount for display, download or print the Licensed Materials for the purpose of personal, non-commercial use, however no publishers allow institutional authors to re-use their work for scholarly and educational purposes, including self-archiving or depositing in institutional, subject-based, national, or other open repositories or archives. There is increasing interest among academics to re-use their own works for scholarly and educational purposes, for MOOCs courses, or to deposit their works in institutional or other open repositories for wide visibility. The Model License reads, in part, that institutional authors "shall retain the non-exclusive, irrevocable, worldwide,

royalty free right to use their Work for scholarly and educational purposes, including self-archiving..., and to comply with all grant or institutional requirements associated with the Work". However, major commercial publisher does not mention any such clause in their license agreement for Electronic Reserve/MOOCs. In model license however, scholarly and educational purposes encompass teaching, research, and institutional needs are considered as important clause of license.

### 6.5 Publishers' Obligations

While considering the Liblicense model licensing agreement we observed the clauses like discovery of licensed materials, persistent linking, availability of online terms and conditions, disabilities compliance, support, training, quality of service, completeness of content, withdrawal of licensed materials, etc are parts of publishers' obligation. However, on looking comparative provision as mentioned in *Appendix A*, such clauses are absent with agreement of commercial publishers under consideration of the study.

## 7. CONCLUSIONS

In the field of e-journals, the license controls access has popularly become the *defacto* procedure of access for digital contents in near future. It is well described that the print publications are governed by copyright law, where perpetual archiving is allowed. The electronic contents, instead, are controlled by a private contract, on which access is allowed for a specific length of time. So understanding various clauses in contracts are essential. In this study it is observed that important clauses like perpetual access, archiving, self-archiving, electronic reserves, copy of individual articles and share the same for non-commercial use by authorised users were unavailable in contracts. The core part of the contract was mainly with price, display of contents, IP access, ILL/ document supply etc. So the modalities of accessing archival materials, or other important issues should be clearly negotiating with the publishers while finalising the contract. Furthermore, most of the obligations of the publishers that are identified as core issues in Liblicense or Jon Cox Associate models were also absent in commercial publishers' license. In this changing environment, therefore, the job of the library managers is not only to obtain the widest possible availability of on-line resources and reinforcing the technological infrastructures of their sites, but also to negotiate with the obligations of licensors in order to enhance user access. They must be acquainted with the clause of the license agreement of commercial publishers and must negotiate to that extend so that the access should be uninterrupted.

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## Comparative study of license agreement of various international publishers/aggregators

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