Managing & Implementing License Agreements for Electronic Resources, Part I

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Where does licensing “fit” within ERM*?

ERM=Electronic Resources Management

Electronic resource life cycle as defined by Pesch (2009).
Role of licensing within ERM

Electronic resource life cycle with new processes (Pesch 2009)
“The Paper Pusher”

“The Annoying (but lovable) Detective”

“The Carpenter”

“The Interpreter”

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By management, I mean...

- Administrative workflows: review process, delegation of authority, etc.

- Mapping licensing language to library services & collection development policies

- Interpretation & communication of license terms
License Administration: Things to Figure Out

**DATA, ORGANIZATION**

Where will you store them?

How long will you keep them?

How will you relate them to resources and projects?

FTE calculation

Standard information regarding access (IP ranges, for example)

**PROCEDURES, PEOPLE**

Who will review?

Who will sign? DocuSign?

What is the delegation of authority for signature, and for which amounts?

What is the role of legal counsel?

How will breaches be handled?

Institutional policies related to liability limitations, indemnification, jurisdiction?
It SEEMED like a simple agreement...

The parties agree to be bound by this Agreement, the Terms and Conditions of Use, available at http://www.publisher.org/terms and the applicable Product and Payment Terms available at http://www.publisher.org/product-payment-terms in addition to the Publisher's Privacy Policy available at http://www.publisher.org/privacy, each incorporated by reference into this Agreement for any Publisher titles and collections Licensee may order now or in the future.

- Appendices?
- Amendments?
- Attachments?
- Schedules?
- Exhibits?
- Annexes?
- References to policies?
- Additional terms?
What’s YOUR licensing personality type?

• Jack McCoy ? (“Law and Order”)
• Perry Mason ? (“Perry Mason”)
• Annalise Keating ? (“How To Get Away With Murder”)
• Dan Fielding ? (“Night Court”)

You have a 2008 agreement with a major vendor, and every time you order a new resource from them, they send an order form which references these 2008 terms. You place the order, and a few weeks later, an invoice shows up which seems to references different terms than the ones on the order form.

What do you do?
What’s YOUR licensing personality type?

• Jack McCoy ? (“Law and Order”)
• Perry Mason ? (“Perry Mason”)
• Annalise Keating ? (“How To Get Away With Murder”)
• Dan Fielding ? (“Night Court”)

You have an agreement from 2010 with Publisher A for audio ebooks. Publisher A is bought by Publisher B. Publisher B sends you a new agreement that will cover new orders from Publisher B as well as new orders for Publisher A content.

What do you do with the old Publisher A agreement from 2010?
Libraries may include links to digital content in local electronic course reserve systems limited to use of Authorized Users of current classes.

Licensee is authorized to... (iii) post up to fifteen (15) single PDFs contained in the Licensed Material for the purposes of electronic course reserve on Licensee’s secure website. (iv) Licensee shall remove all single PDFs posted on their secure website within sixty (60) days after the course has been completed.

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Interpret and Communicate the Terms

Who needs to know what about the agreement? Which people, departments, etc. are affected by what the license says?

With whom might you have to collaborate to implement it, sign it, comply with it?
Who Needs to Know What When?

Imagine you are reviewing an agreement and come across the following language.

Ask yourself: who does this affect? Who is the expert in this area? Who needs to know what we’re possibly agreeing to? Who do I want on my team?
### Who Needs to Know What When?

<table>
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<tr>
<th>Subscriber will be invoiced the Monthly Content Commitment and Monthly License Fees on a monthly basis.</th>
<th>Acquisitions, Accounts Payable, others?</th>
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<tr>
<td><strong>Licensor will provide MARC records at no additional cost.</strong></td>
<td><strong>Discovery/Systems staff</strong>&lt;br&gt;Accounts Payable, Acquisitions? Others?</td>
</tr>
<tr>
<td><strong>Licensee shall ensure that applicable Researchers return, destroy or purge all Data (including any copies) in their possession or control, and provide written certification of the destruction...</strong></td>
<td><strong>Administrative departments</strong>&lt;br&gt;Subject librarian&lt;br&gt;Faculty Researchers</td>
</tr>
<tr>
<td><strong>This Agreement outlines your rights and responsibilities as the holder of an Institutional License for: 2 copies of “A Good Documentary” DVD Video Sold Purchased on 06/29/2010. This Agreement expires on 06/29/2012.</strong></td>
<td><strong>Circulation</strong>&lt;br&gt;Acquisitions&lt;br&gt;Systems Librarians&lt;br&gt;Subject Librarians</td>
</tr>
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### Who Needs to Know What When?

| 6.1.8 Allow walk-In users access to Licensed Materials only from computer terminals within the Library Premises, as designated in Schedule 1. | IT departments  
Systems staff  
Networking |
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<td>Publishers may impose their own conditions of use applicable only to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content. The Licensee shall take all reasonable precautions to limit the usage of the Databases(s) to those specifically authorized by this Agreement.</td>
<td>Staff who work with ILL, ereserves, reference desk</td>
</tr>
<tr>
<td>The Subscriber will, immediately on becoming aware of any unauthorized use or other breach, inform provider and agent and take reasonable steps, including appropriate disciplinary action as consistent with local policies, both to ensure that such activity ceases and to prevent any recurrence.</td>
<td>IT departments, systems, networking, legal counsel</td>
</tr>
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Who is impacted? Who are the stakeholders?

**Collection Librarians, Acquisitions Staff** – automatic renewals, cancellation deadlines, no perpetual access, payment terms, removal of content, etc.

**Library/Campus IT staff/Systems Librarians** – unusual usage restrictions, troubleshooting unauthorized use, access questions for remote users, additional discovery and access points, etc.

**Library administration/legal counsel** – Potential breaches, unusual restrictions or use requirements, changes to authorized users

**Library staff in circulation, reserves, interlibrary loan** – any terms that deviate from workflows or can’t be complied with using current systems

**Faculty members** – unusual requirements for reporting, publishing, privacy, changes to content, etc.
Questions?

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