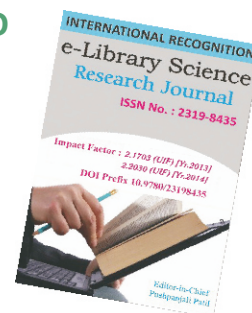




LICENSE AGREEMENTS AND LEGAL ISSUES CONSIDERED BEFORE ACQUIRING ONLINE E-RESOURCES BY LIBRARY CONSORTIA: A STUDY

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ABSTRACT

In today's e- environment most of information and Knowledge resources are in electronic format. The whole subscription process and its access continuity depend on the agreement that the subscribing Library or individual subscribers sign with the online access provider, mainly the publishers of online journals or databases. The present study presents preliminary findings of a content Analysis of 4 e-journal licenses of Society and Commercial publishers. This study explored whether license clauses varied among commercial publishers, society, and whether differences existed between consortia and site licenses. This study can be helpful for libraries to understand the legal issues of licenses related to subscription of e-journals.

KEYWORDS : License agreement, Consortia, e-journals.



INTRODUCTION :

Till recent years, when libraries had to acquire all its resources in hard copy format, licensing and agreement as terms were absolutely unheard of. What library administrators had to do was to decide about a resource, pay for it and acquire the same for its uses by its users. There used to be no obligation on the part of publishers after a resource either in a book form, or even earlier electronic media such as CD-ROMs, was delivered to a Library. Of course, in the cases of serials or multi-volume,

multi-issue journals, the relation or obligation on the part of publishers was prolonged up to - supply of all issues for which payments had been made. Once the supplies of all published issues were made, libraries and publishers concern about the content of the volume used to get completely disconnected. Once in a while, there used to be sporadic murmur about copyright issues. However, the issue used to be considered as trivial and even not at all related to Libraries because of the presence of fair use or use for academic clauses in the copyrights acts which almost immunized Libraries.

However, libraries and publishers and content controllers no more enjoy such disconnected kind of relations. After the advent of online resources, which has almost made any physical presence of resources available in libraries redundant, it has brought about a metamorphosis of the whole scenario. Libraries pay for the resources to the publishers/ content owners and get online access to the paid product for a limited period depending on the payment terms and agreement. The two parties,

libraries and publishers, agree on a certain payment terms and period. The terms and conditions on who will use the product, how the same will be used by the users or how the publishers will make the access for usage all depend upon the agreement between the parties. So the Agreement or licensing terms and conditions have come to become the central theme of all acquisitions in today's library management.

The Licensing agreements have gradually taken a centre stage mainly because the publishers have monopolized or have been trying to control the clauses of licensing in such a way that the product gives as maximum a capital return as possible. Since the content, in physical terms, have not to be transferred to the client and remain at the server of the publishers, a tactically drafted licensing agreement gives leverage to the publishers. On the other hand, in the absence of acquisition of any physical entity of resources, libraries have to negotiate before a licensing agreement is signed in such a way that the uses get maximum benefit out of the cost paid.

In such a scenario, where licensing agreements are the key to all online resource acquisition, it is obligatory on the part of the libraries to understand the nutty gritty of legal clauses before signing an agreement.

Licensing agreements issue becomes much trickier for Consortium administrators as there is more number of participating libraries involved and the licenses involve more users, more access sights and multiple points of minute details to be looked into.

Many studies have been made regarding licensing clauses of agreements that publishers are so rigidly following and the libraries have to sign for acquiring resources. Unfortunately, publishers follow altogether different approaches for various compulsory clauses. While commercial publishers have drafted their agreement terms keeping their long term commercial interest in mind, even society publishers have shown too much rigidity in terms of commercial clauses. Libraries and Library consortia of India have to pay more attention to the licensing clauses of various publishers and have to take sufficient precaution before signing an agreement.

AIM OF THE STUDY

The aim of the present study is to minutely look at the licensing clauses of some of the publishers and make the library administrators more aware about them. The various clauses are analyzed to see how each clause should be understood in view of their long time implications and how the clauses could jeopardize the access pattern of resources.

MATERIAL AND METHODS

Libraries have to sign a legally acceptable document that had been negotiated with and agreed to by the publishers. Consortia sign such agreements on behalf of their member libraries. Though, normally each library of consortium should sign its unique licenses based on the negotiated terms and conditions, publishers have largely a rigid license draft. The license agreements are either available on the websites of the publishers. We have downloaded the licenses of the four publishers chosen for this study. The two, Elsevier and Springer are the commercial publishers whereas the two others, American Chemical Society (ACS) is a large society publishes publishing above forty online journals of high reputation in the area of chemistry and chemical research and ASM is the society publisher publishing about a dozen of core journals in biological science. We have taken the data from the websites of the Publishers of e journals, thus, we have collected and collated the data in order to find out information with an aim to know the legal position of each publisher with regard to the following:

- ✦ Archival issues:-What exactly will be the position of access of the content of the period for which payment was made especially if the subscription renewal does not take place for financial reasons or otherwise.
- ✦ Authorised Use:-The definition of authorised use is quite unclear. So libraries, while signing, must make the definition as accepted by the publishers very clear
- ✦ Authorised Users: - Users as per the library definition is all the users who visit or access the library. However, many a times, publishers take only the staff/ student/faculty of the parent organisation of the library as the authorised users
- ✦ Authorised Sites: -Many a university/ institutions are multicampus in nature. The different campuses are located at different geographical locations and cities and even countries. The IPs of the campuses are also different whereas publishers may take one geographical location as one site.
- ✦ Remote Access: - Access to the authorised users are normally limited to the campus or the place of working through the IP address of the campus. However, there are some publishers who allow authorised users to access the resources while being away from their campus through remote access. This clause also varies from one publisher to other.
- ✦ Subscription period:-The period of subscription also has to be clearly spelled out in the license agreement. The period depends on the negotiated agreement between the library concerned and the publisher.
- ✦ Back files: - Many publishers database contain back files of the publication of the period prior to the subscription period for which payment is made. Publishers offer the back files as per the package. Thus, the license agreement has to clearly mention what will be the policy and payment terms for continuance of back files.

RESULT AND DISCUSSION

After all the resources were collated and the tabulated we have found the status to be as follows:

Table No 1
Comparison of Society Publishers License Agreement

Issues	License Terms of ASM	License Terms of ACS
Scope of Grant	Revocable non transferable license to access each ASM journal online	ACS grants grantee non exclusive and transferable permission to access ACS products and services
Archival issues	Not Mentioned	Not Mentioned
Authorised Use	Not Mentioned	Authorized Users and Other Users may view, download, save, or print individual articles, individual book chapters, proceedings, Reagent Chemicals monographs or other individual items from the ACS Products for their personal Scholarly, research, and educational use.

Authorised Users	Authorised user may browse search retrieve and view an ASM Journal online and may download store print out <i>single copies of individual articles</i>	<ul style="list-style-type: none"> ➤ Authorized Users may supply print or electronic copies of individual items taken from the ACS Products when required by law ➤ Authorized Users and Other Users may not use ACS Products to support work performed on behalf of any commercial entity other than the Grantee ➤ Users may not modify, alter, or create derivative works of the materials contained in the ACS Products without prior written permission from ACS. Indexing, by human or machine means, aggregating, data mining, peer-to-peer (or similar) file-sharing are all prohibited uses unless an institution concludes a specific, separate agreement with ACS
Authorised Sites	<ul style="list-style-type: none"> ➤ 1-No Access from remote campuses or remote sites and no consortia or other forms of subscription sharing are allowed under this License ➤ 2- Authorised sites controlled by IP addresses provided by licensee ➤ 3-There is no limit on the maximum no of IP addresses or workstations at an authorized site 	Authorized Users will be recognized and authorized by their Internet Protocol ("IP") addresses. Grantee is responsible for providing valid IP addresses
Remote Access	Remote dial in access provide only to authorized users of the authorized site	Not Mentioned
Subscription period	Not Mentioned	Not Mentioned
Back files	Not Mentioned	Not Mentioned
Fees and Payments	-	ACS will not activate grantees access to the ACS products until grantee provides

Table No 2
Comparison of Commercial Publishers License Agreements

Issues	License Terms of Springer	License Terms of Elsevier
Scope of Grant	Non Exclusive revocable and non transferrable license	Grants to the Subscriber the non-exclusive, non-transferable right to access
Archival issues	Not Mentioned	Not Mentioned
Authorised Use	Licensee shall not Remove obscure or alter any copyright	<ul style="list-style-type: none"> ➤ Access, search, browse and view the Subscribed Products ➤ SciVerse® ScienceDirect® online service that are not subscribed to as part of the Subscribed Products, with each twenty-four (24) hour access period for a selected article or chapter, a “Transaction”
Authorised Users	Not Mentioned	Authorized Users are the employees and individuals who are or are employed by independent contractors
Authorised Sites	Not Mentioned	Access to the Subscribed Products will be authenticated by the use of Internet Protocol (“IP”) address(es) and/or usernames and passwords and/or a delegated authentication mechanism requiring at least two different credentials
Remote Access	Not Mentioned	Not Mentioned
Subscription period	Not Mentioned	Not Mentioned
Back files	Not Mentioned	Not Mentioned
Fees	30 days after invoice	The Subscriber will pay to Elsevier the fees set within <i>ninety (90)</i> days of date of invoice. Late payments will be subject to interest charges of <i>1% per month</i> on the unpaid balance.

CONCLUSION

While it is quite necessary for the libraries to consider each and every line and word of the license document to be signed with the publishers, users ease of access has to be kept in mind. Technology is also in a rapidly changing situation, the clauses do get redundant quite frequently. Library and consortia administrators have a much serious responsibility to negotiate with the publishers in such a way that their users get more than what is being paid for. Access issues have to be resolved both as a legal issue as well as a technology availability concern. For example, if libraries, with the help of their IT professionals could have remote access facilities installed in the campus for its visiting or travelling faculty, the remote access clause can even be ignored. However, if available technology does not support such access, license agreement has to take care of the issue. Similarly, a penalty clause for the non-availability of access due to fault of the publishers must be incorporated in the license agreement. This clause will put enough onus on the publisher to maintain regular accessibility of paid resources. A robust complaint solution mechanism also has to be the part of the license agreement.

REFERENCES:-

1. Zhang, M. & Eschenfelder Kristin, M. Z. (2011). License Analysis on e-Journal Perpetual Access of Library. retrived from <https://www.asis.org/asist2012/proceedings/Submissions/273.pdf>
2. Farb S, Negotiating use, Persistence and Archiving: A Study of academic Library and Publisher perspective on licensing digital resources.
3. Park E G, Perspective on access to electronic journals for long term perservation. 33 (1), (2007) 22-25.
4. Rogers S, Survey and analysis of Electronic journal licenses for long term access provisions in tertiary New Zeland Aademic Libraries. Serial Review, 35 (1) (2009) 3-15.
5. <http://pubs.acs.org/page/4librarians/licensing/terms-conditions.html> (Accessed on 28/10/14)
6. <http://www.springer.com/authors/journal+authors/helpdesk?SGWID=0-1723213-12-808504> (Accessed on 25/10/14)
7. <http://www.elsevier.com/journal-authors/author-rights-and-responsibilities> (Accessed on 31/10/14)
8. <http://www.emeraldinsight.com/> (Accessed on 2/11/14)



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