

Licensing Electronic Resources: State of the Evolving Art

by [George Soete](#), ARL/OMS Organizational Consultant

A diverse group of 150 information professionals gathered in San Francisco on December 8-9, 1996 for *LET THERE BE LIGHT! A Conference on Licensing Electronic Resources: State of the Evolving Art*, jointly sponsored by ARL and the Coalition for Networked Information. Lively presentations and discussions ranged broadly through copyright, contract law, the economics of publishing and acquiring electronic information, and the management of electronic property.

Vincent Resh, Professor of Environmental Science, Policy, and Management at the University of California, Berkeley and Editor of *Annual Reviews*, opened the conference reflecting the views of the ultimate producers and consumers of scholarly information--scholars. Resh sees a future for electronic publishing where individual chapters and articles are available on the Internet as soon as they are "typeset." Eventually, he predicts, all articles will be available on the Internet for free: one will pay only for downloading.

Liz Pope, an Electronic Publishing Developer with Academic Press, provided important insight into what several publishers are doing to enter the electronic publication arena. Pope described APPEAL, the Academic Press Print and Electronic Access License, a licensing scheme that provides a network or consortium of libraries access to a defined collection of Academic Press journals. APPEAL permits unlimited viewing, downloading, and printing of complete journal articles for personal research or internal company business purposes and allows all authorized users at all sites within licensed library networks to have access to all the journals held by the consortium collection.

Ann Okerson, Associate University Librarian at Yale University, presented the point of view of a large academic research library that has negotiated some one hundred "significant" database licenses with vendors. Okerson noted that negotiation is usually reserved for those occasions when economic stakes are high on both sides, when there is no firm basis for pricing, or when the parties distrust one another for some reason. Successful license negotiation, according to Okerson, requires some knowledge and skills in the area of licensing, but also important is a sense of the goals of one's organization, patience and flexibility, and clear authority and confidence from the parent organization.

Georgia Harper, an attorney in the Office of the General Counsel of the University of Texas System, pointed out that the time when we could ignore licensing has passed. Licenses can have unacceptable and unreasonable access and use restrictions in them. Moreover, vendors can terminate such licenses--even sue you for loss of revenue--if the terms of an agreement are not observed. Harper provided several practical reminders for dealing with licenses and explained that copyright law is the backdrop for current disagreements in the field of licensing. Users and producers of electronic information have very different views of fair use. Though there have been few lawsuits thus far, the digital environment provides a combustible mix: a huge potential educational market; copyright owners who are anxious and fearful about losing rights and profits; and naive users.

Trisha Davis, Head, Continuation Acquisition Division, Ohio State University, encouraged attendees to become more familiar with reading and managing licenses. Although there is no standard license agreement, Davis identified four areas that are found in all licenses: definitions, use capabilities and restrictions, user obligations, and other contractual provisions such as termination clauses and

warranties. Davis advocates creating templates for important pieces of information, such as who the library's users are and how they access and use electronic information, and has developed teams locally who help answer these types of questions. These resulting written statements become addenda to actual contracts, and they have been enormously helpful in explaining key points to vendors.

Barbara McFadden Allen, Director of the CIC Center for Library Initiatives, described the experiences of CIC member institutions over the past two years as they have negotiated eight large consortium contracts for electronic information resources at an estimated savings for member libraries of one million dollars. According to Allen, identifying and evaluating electronic content of interest has not been a difficult problem; evaluating access, on the other hand, presents challenges. Points of evaluation and eventual contract negotiation include: defining the participant libraries; defining the user population; agreeing on security; defining remote versus onsite use; describing the format and media of the data; and defining ownership rights to the data (purchase or lease). The CIC uses its size and buying power to demand significant price breaks. Allen also noted that effective communication is critically important. There should be a single contact point in each library during the decision process. Moreover, member libraries should be discouraged from "jumping the gun"--negotiating separately with the vendor--even though they may be powerfully motivated to do so.

David Farrell, Assistant University Librarian, University of California, Berkeley, focused on *Principles for Acquiring and Licensing Information in Digital Formats*, developed by the University of California Libraries System-wide Collection Development Committee. According to Farrell, there are four core principles in the document: 1) the key objective is to own the content of electronic resources, archive it, and preserve it; 2) support of logical, cost-effective, common standards is encouraged; 3) fair use must be preserved; and 4) negotiators need to see a rationale for costs.

While helpful to the UC campuses, the guidelines have also been useful in communicating basic principles to vendors, who often appear to be as lost in the world of licensing as librarians are. Farrell suggested several items for the future: more flexibility in product options--smaller sets within large collections, alternatives to present pricing schemes, and stronger focus on database quality; fewer surprises--such as sudden changes in the coverage of the database; and better data on what, of the electronic products we acquire, our users actually need and actually use.

Emanuella Giavarra, Project Director for the European Copyright User Platform (ECUP), presented a European perspective on intellectual property and licensing. Giavarra discussed the development of the Position on User Rights in Electronic Services--an ECUP strategy for moving the issues that arise in licensing into the arena of regulation. A guiding principle of the ECUP position is that "the user has the right to have access to copyrighted material and to make a copy for private use, research, or educational purposes." Thus, users should have the right to read or view publicly marketed copyright material, on site or remotely, and to copy a limited number of pages electronically or on paper for private use, research, or educational purposes. At the same time, rights owners can expect that libraries will strive to ensure the implementation of safeguards to comply with contractual limitations and will inform their users about copyright restrictions. As a part of their position statement, ECUP has provided a model for legitimate access which looks at the interplay of several dimensions, including type of library, type of user, type of access, and types of permissible activities.

Richard DeGennaro, Senior Library Advisor for JSTOR, presented another vendor model for providing electronic information. JSTOR is developing strategic partnerships among copyright owners and libraries. The JSTOR license includes a broad definition of "authorized users," and users are permitted to make limited copies--both print and electronic--for personal, non-commercial use. The potential use of JSTOR materials to fill interlibrary loan requests, however, was of great concern to publishers and difficult to negotiate. DeGennaro believes that ILL will be an insignificant portion of JSTOR use. In the

end, ILL is permitted, but licensees will be required to track actual usage of JSTOR materials for ILL over the next two years.

Marie Hansen, Associate Director of Johns Hopkins University Press (JHUP), focused on Project Muse, which aims to make at least 40 journals in the humanities and social sciences available by subscription on the WWW. Licenses permit unlimited onsite copying and downloading, but do not permit exporting over the Internet. Hansen noted that, contrary to popular opinion, there are significant costs associated with electronic publication.

- First copy costs for either a print or electronic product account for 60% of total costs.
- Traditionally, costs for print copies have constituted the remaining 40% of the costs.
- JHUP is estimating that the electronic version will cost another 30% to prepare.
- Therefore, JHUP has set 130% of the print subscription as the price for both print and electronic access. Electronic only access is offered at 90% of the print subscription price.

Robert Weber, Senior Vice President, InterTrust Technologies Corporation, focused on the management of intellectual property. InterTrust and other knowledge management companies are providing technical mechanisms for protecting the rights of various contributors to a piece of electronic information (author, publisher, etc.) as the information makes its way through the "value chain" to the end user. In addition to rights protections, these "secure containers" provide the opportunity for income payback for those who add value to the information process, as well as valuable usage data.

David Millman, Manager of Research and Development, Academic Information Systems, Columbia University, reported on an NSF-sponsored workshop on Terms and Conditions in Digital Libraries, held at Columbia University in September 1996. The workshop brought together 35 participants who offered legal, economic, policy, publishing, library, and technology perspectives. Major outcomes of the session included: 1) a realization that there is a need for an interface between copyright law and contract law; 2) pricing for network-based information is simply not well understood at this point; 3) maintenance of privacy is a crucial issue in the networked environment; and 4) education of end users is crucial.

George Soete, ARL/OMS Organizational Development Consultant, provided a brief wrap-up of conference content. Soete noted how strong the human themes were, even though conference content focused on apparently technical subjects. Librarians and technologists will be challenged by working with each other and with vendors in new ways. They will need to sharpen interpersonal skills, especially negotiating skills. To gain mastery over the relatively new arena of licenses and licensing, an individual will need to commit to learning more about the subject, to teaching their organizations what they have learned, to try new approaches, and to view "failures" as learning experiences.

A [more detailed summary](#) can be found at [/scomm/licensing/sum.html](#). The full conference proceedings will be published in 1997.

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