

Contemporary Trends and Debates in E-Journal Licensing

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Contemporary Trends and Debates in E-Journal Licensing

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Good morning, everyone. My name is Kristin Eschenfelder and I'm a professor at the School of Library and Information Studies at the University of Wisconsin-Madison, and this August I also became Director, which means I'm now a manager. I'd also like to introduce my colleague Mei Zhang who is a doctoral student who works with me at the University of Wisconsin-Madison. Today I'm going to be talking about two studies, one of which Mei was the lead on and so I'm sure that Mei's job here is to answer all your hard questions, so I've told her that, and she is ready and prepared.

In my life, in the library ivory tower, what I do is I study most broadly the rules people create to govern what knowledge they're willing to share with other people and under what conditions. That's the broadest way of putting it. Most recently I've been looking at that in terms of data: data sharing and data repositories and rules for data repositories; but we've done a number of studies on e-journal licensing and Mei is doing her dissertation work on e-book licensing as well, and today we're going to be talking about our licensing data. Of course, licensing is a totally fascinating area that is a great exemplar of this issue of the rules people create to govern the terms and conditions under which they're willing to share information with each other. Of course, in many cases, and particularly in the case of licensing, there is also the exchange of money involved. So a couple of caveats. First, I am not going to be talking about pricing at all, for two reasons. One: we actually didn't collect the pricing data. Second: the terms and conditions under which I got the data actually preclude us from doing that; so I can't answer any questions about pricing. There are some economists who are working in that area whose work I can point you to, but just so you know I can't talk about pricing

because honestly I don't know. So it's not that I don't know and I'm not going to tell you; I honestly don't know. I don't have the data.

The second caveat that I think is really important to understanding and interpreting the data we're going to show you is that this data is old, in licensing terms, so the last license we looked at was 2009. A lot has changed since 2009 if you have gotten new licenses or renegotiated licenses, and for that reason I want to leave quite a bit of time at the end for people to ask questions and also to make comments. Perhaps there are probably some vendor reps in the room who would like to talk about how their terms and conditions have changed since the licenses, from the licenses that we have in our study. So I will leave time to do that, and I do want to point out that the data is from 2009.

Now, why do we have such old data? One issue is that it takes a really long time to get licensing data, and so the data we got, let's see, they collected it probably in 2010; we got it probably in 2011, late 2010, late 2011. It takes us a year to do our thing. It takes it a year and a half or so to get it into a journal, etc., so there's a big time lag here.

What are we going to be talking about today? We're going to be talking about some very high-level results from two studies. So study number two, which is the more recent study, which is the study that Mei is the lead on, is a study that focuses on the perpetual access terms in licenses. So we're going to be talking about that. And then the older study, which I'm calling study number one, is a study that I was the lead author on that looks at interlibrary loan, scholarly sharing, e-reserves and a few other use-clause aspects of licensing. And that article [Eschenfelder, Tsai, Zhu, and Stewart. (2013) *E-Journal Licenses from 2000-2009: An Analysis of Downloading, Scholarly Sharing, Interlibrary Loan and Electronic Reserves Clauses*. In press at *College & Research Libraries*.] is actually out in *College and Research Libraries* so those of you with laptops in the audience, you can go to *College and Research*

Libraries, go to their preprint in-press archive and do a search on my last name, and it will pop right up, and you can look at the full data tables because, of course, we can only show you part of what is in the full article.

What do we do when we analyze these articles? We do what we call a content analysis or a structured content analysis, and what that means, in research method terms, is that we want to extract data away from these licenses. We have a huge set of licenses, so big that we can't possibly tell you everything that's in it. There is too much detail. So we need to abstract away from those licenses. How we do that abstracting in a way that is very systematic, that someone else could come along and repeat and ideally get the same results? We want to kind of minimize interpretation, or, if interpretation can't be avoided, to create very explicit rules sets so that again, if you came along and had my rule set and you reinterpreted the licenses, you would get the same results. We try and make it as systematic and objective as humanly possible. It's an extremely onerous process. Look at Mei. Doesn't she look tired? That's because she's been reading too many licenses—224!

What do we do? We move through this big block of licenses in this very structured systematic way, an objective way, to try to present to you this very high-level abstraction of what's in this huge body of licenses. The other thing we do to kind of make sense of it is we compare the terms in the licenses to terms suggested by model licenses. So the model licenses, we looked at a whole bunch, ICOLC and the Liblicense were perhaps the most useful; also California Digital Library, ARL, CIC's licensing terms; we looked around to see what people recommended ought be in licenses, and then we compare these licenses to those recommended terms. Now, to be fair, of course, these are library recommended licensing terms. There are other publisher-side recommended licensing terms out there that one could sort of re-analyze this data in light of those, so it is a definite sort of slant to the analysis.

Okay, so the question is probably in your mind, "Where the heck did they get these licenses from?" We had a data set of 224 unique licenses,

and I did not personally collect these licenses. These licenses were collected by Ted Bergstrom who is an economist out at UC Santa Barbara. And I don't know if you guys remember in the news several years back, there were actually several court cases related to Bergstrom's collection of this data. I believe somebody brought a complaint in Texas and maybe also one in California. But what happened is Bergstrom and his team sent out open records requests to large state universities asking for licenses for certain year periods from just certain publishers. So another limitation of this data is that it tends to be from only large state universities because you need to use an open records request and therefore you can't get private university data. Also Consortia; there's some consortia in there. But there's only certain publishers, and these are publishers that Bergstrom was interested in for his pricing data, so they're not necessarily the publishers that I would've chosen just looking at use terms, but he had already collected the data so I was sort of stuck with what I got.

Bergstrom's data set had data from 38 large universities and eight consortia representing large state universities and 11 different publishers. So we used this sample in two ways. The older study, the one I was the lead on, where we are looking at interlibrary loan and scholarly sharing, we actually read all 224 licenses in great detail, and it was an incredibly painful experience. I don't think our friends, a couple of our friends who worked on that, they still have not recovered. They did not want to be licensing librarians after that experience, I'm sad to say. We looked at all 224, and based on that experience, what we found is there's a great deal of repetition in the licenses, particularly the consortia licenses, because if it's a consortia license, everybody is getting the same copy. So we would find that there would be nine different copies of the exact same license sent in by members of the consortia. Because of that repetition, when we did the second study that Mei was lead on, we decided to use a random sample of the 224; so the data, just to be clear, the data on perpetual access actually stems just from 72 of those licenses, but it's a stratified random sample of those licenses so it's still representative of the set of 224.

What are the licenses? Of the 224 licenses, the first basic split is between what I am calling “commercial publishers” and “non-commercial publishers” (Figure 1). Non-commercial publishers lumps together some distinct subgroups, but we just didn't have enough within that distinct subgroup to make distinct subgroups. We have within that non-commercial set at the bottom a total of 38 exemplar licenses. Among the commercial publishers license, we had 186, so quite a few more. Then we broke the licenses into two time periods: sort of an earlier period, 2000 to 2005, and the later period, 2006 to 2009, and that's because in the articles we write, we like to show change over time. That's one of our big analyses is, “have things changed over time?” So that's what we look at is the two time periods and so if there is a difference.

Of course we look at differences between individual publishers as well, so amongst our commercial publishers we had 26 licenses from Wiley, 18 licenses from Blackwell, 16 licenses post-merger Wiley-Blackwell, 47 Elsevier licenses, 30 Emerald, 15 Sage, 8 Taylor and Francis, and 26 Springer. So you can see there's quite a bit of variation there with some publishers having a lot more licenses in the set and others not so many. And then the distribution gets worse in the non-

commercial publishers. We have American Chemical Society with 16, Oxford with 14, and Cambridge only had 8, so that caused all sorts of issues in terms of trying to draw conclusions. For some publishers, we felt like we had a pretty robust set of licenses that we could say, “Oh yes, in this period this publisher tended to have these sort of access and use terms,” but other ones where we only had eight, I think the conclusions are little sketchier there. One of my big complaints with this work, and one thing I would definitely like to work on in moving forward, is this lack of diversity in non-commercial publishers; there's only three in there. Definitely one of the things that I would like to do moving forward is to try and get more licenses from a much wider diversity of non-commercial publishers. I think there are many, many more interesting things to be said about the non-commercial market that this data just can't do because of the limitations of the sample that we had. But this is what we were given, so it's what we had to work with.

On to point number one: perpetual access. This is the part of the study where Mei has taken the lead, and the first thing we had to do was come up with a definition of perpetual access (PA). For those of you who were in the perpetual access session yesterday afternoon, I think one of the

Commercial Publisher Licenses N=186			
	Total Licenses #	2000-2005 #	2006-2009#
<i>Wiley (WLY)</i>	26	10	16
<i>Blackwell (BLW)</i>	18	7	11
<i>Wiley-Blackwell (WBL)</i>	16	--	16
<i>Elsevier (ELV)</i>	47	11	36
<i>Emerald (EMR)</i>	30	8	22
<i>Sage (SGE)</i>	15	--	15
<i>Taylor & Francis (T&F)</i>	8	1	7
<i>Springer (SPR)</i>	26	6	20
Non- Commercial Publisher Licenses N=38			
<i>American Chemical Society (ACS)</i>	16	11	5
<i>Oxford University Press (OUP)</i>	14	4	10
<i>Cambridge University Press (CUP)</i>	8	3	5
Total	224	61	163

Figure 1. Commercial Publisher Licenses vs. Non-Commercial Publisher Licenses

points there is that what exactly perpetual access means is pretty fuzzy. We defined it as “the ability of libraries to obtain continuing access to subscribe materials during the time of the license and after the termination of the subscription regardless of ongoing access charge.” So important point number one: if there is an ongoing access charge, we still counted that as perpetual access. What we found is that past studies that have done content analysis of licenses in terms of perpetual access have tended to ask a more simple binary question: is there perpetual access in the license or is there not? Kind of a yes/no question; and we did ask that question, but what we found is that that question is really not that interesting because most do, with a couple of exceptions, which we’ll talk about. But what gets interesting is when you get to the “yes,” what counts? What is the variation within “yes?”

What is that variation? So we looked at the basic yes/no question, is PA provided upon cancellation? But then we looked at how back files were treated with perpetual access. So are back files included in perpetual access if they are part of the original contract, and then we also spent quite a bit of time looking at the location of the perpetual access copy with three basic kinds of subtypes. The first being library perpetual access,

or what we call library PA, and that is where the perpetual access copy lives at the library; the vendor ships you an electronic file, it's the library's responsibility to host it. Carry on; you're on your own. The second is publisher PA; this is where the publisher is offering PA service. You pay your annual access fee, and you can continue to access it from their server, enjoying their interface and all of the associated search tools, etc. And then the third option was what we called third-party PA, where the PA copy was hosted at neither of the above two, but somewhere else, and there is some interesting variation in that as well.

Let's look at some of the data (Figure 2). This is a very high-level summary of what I thought would be the most interesting data for this audience. In the first row, we looked at what percent of a publishers' licenses within our sets, remember that's all of the given publishers licenses from 2000 to 2009, what percent of those licenses provided some type of PA upon cancellation? The publishers whose licenses were most likely to include PA included Elsevier, they're on the right with 76 to 100% of their licenses included this clause, that's what this means. In the 76–100% column, we have Elsevier, Springer, Sage, Wiley, Blackwell, Wiley Blackwell, Oxford, Taylor and Francis. In the 51 to 75% category, we have

Perpetual Access

Model License Recommended Use Term	0-25%	26-50%	51-75%	76-100%	Summary
PA provided upon cancellation	--	EMR, ACS,	CUP	ELV, SPR, SGE, WLY, BLK, WBL, OUP, T&F	ACS and CUP have a higher % of older licenses which may skew their % lower.
Backfiles included if part of original subscription	SPR, ACS	WLY	--	ELV	

Figure 2. Perpetual Access

Cambridge, which was less likely, but 51 to 75% of their licenses did ensure PA. It's important to note here that the Cambridge data is probably skewed by the higher number of older Cambridge licenses in the sample; we tended to have more old Cambridge licenses. Part of their lower percent could stem from that. If we had more new ones, that might've been over a bit more. In the 26 to 50% category, Emerald and ACS licenses were the least likely to ensure PA, but there actually were some that did. And it's important to note here that both American Chemical Society and Emerald, this result makes sense, actually, because both of these publishers actually offer their older content as a separate product for purchase or lease, so within that context it sort of makes sense that that's the way the data came out. Okay, so that's sort of the first row. That's the basic yes/no question: "Is perpetual access in the license or not?"

If we go to the second row, this is where we begin to ask about back files. Model licenses suggest that licenses ought to include back files in perpetual access if the back files were part of the original subscription. And what we found overall, you see, there are only four abbreviations listed there. What that means is that overall only a small percent of our licenses actually did this. So of all

the 224 licenses we looked at, 21% included this; we're not doing so great in that area for this, again, for this particular data set of licenses. But it's 2000 to 2009. Of those, and in our article we break this down by commercial and non-commercial, commercial licenses were more likely to include this than non-commercial licenses. Only Elsevier consistently offered this option in their licenses. Twenty-six to fifty percent of Wiley licenses did so but sadly after the merger, the language offering this choice sort of disappeared from the later Wiley-Blackwell licenses. As I mentioned before, we have Springer and ACS over here and a few Springer, and then we found one 2006 ACS licenses include this option and that it was gone.

Second set of perpetual access data (Figure 3), first row. Most model licenses recommend that licenses specify where the perpetual access will be hosted or give some kind of choice. In the license it should say, "We offer perpetual access, and here is how we are going to offer it to you. Here's where it's going to be," or "We're going to offer you perpetual access, and you have a choice of this option or this option or this option," but it's specified. Model licenses say it should be clear in the license what the options are. Publishers did pretty well here, with again on the right in the 76

Perpetual Access

Model License Recommended Use Term	0-25%	26-50%	51-75%	76-100%	Summary
Specify PA location in license		ACS, EMR	CUP	ELV, SPR, SGE, WLY, BLW, WBL, OUP, T&F	ACS and CUP have a higher % of older licenses which may skew their % lower.
Library PA an option	OUP, EMR	ACS	CUP	ELV, SPR, SGE, WLY,	

Figure 3. Second Set of Perpetual Access Data

to 100% category, most. Elsevier, Springer, Sage, Wiley, Blackwell, Wiley–Blackwell, Oxford, and Taylor and Francis licenses all specify one or more locations for perpetual access, and over half of the Cambridge licenses also did so. Under half of the ACS and Emerald licenses specify the location for PA, but again, these publishers tend to treat back files as a separate product that one can purchase or lease so again it would make sense that they are not really addressing this in their license.

Then the final row: model licenses recommend that publishers include library PA as an option. That doesn't mean you have to choose it, but they recommend that publishers offer it as an option. Again, library PA is where you librarians are getting the digital files from the publisher, and then you're on your own in terms of hosting it and providing access to it. Okay, so what we found, again, is that in the 76 to 100% category on the right we have Elsevier, Springer, Sage and Wiley; so most of their licenses offer this option. Just somewhere between 51 and 75% of Cambridge licenses did so; again, that might be dragged down by their older licenses. Again, ACS and Emerald are under, but that makes sense given the way that their business model is. And Oxford also appears in the 0 to 25% category, but again, this is another point to remind you that this is older data because I know Oxford has subsequently changed their policy on this now.

A few higher-level thoughts about what we saw in terms of perpetual access in licensing, particularly in terms of location: what we found is that publisher PA is pretty dominant, but is falling overall. In terms of the two time periods, it fell from 57.9% to 51.4%; so what that means is that over time, fewer licenses were offering that publisher PA option, or were stating, “Dear Library, we are offering you PA and we are going to provide it to you,” and maybe there is an access fee involved. The second point we found that library PA is also dominant and rising, so there was more mention of this overtime. It grew from 57.9% of licenses in the early period to 59.5% of licenses in the later period, so it's a rising trend. The one I thought was most interesting, and I would be really interested in people's comments on this, why this is, is that the third-party PA was

really tepid at best. In the early period it was rarely mentioned, 5.8%; it did grow in the second period, 37.8%. But the vast majority of those were references to LOCKSS, which of course is a library cooperative program, and I was surprised by how little Portico was mentioned. But yet, at the same time, we know that all of our publishers in this study are members of Portico, so that doesn't necessarily mean that their stuff isn't in Portico, it just means that it's not described in the license, but I thought that was kind of an interesting phenomenon. Why is it not mentioned in the licenses? It may just be that people don't think it's important, but again, I would love to hear people's thoughts on why third-party services like Portico aren't mentioned in licenses in discussions of perpetual access.

A few other interesting overall thoughts about PA: all the licenses that discussed PA, so not the ACS and not the Emerald, guarantees PA upon expiree of subscription, but a shrinking number of licenses guaranteed post-expiree PA in what Mei has termed very politely “more complex conditions.” “More complex conditions” include things like when a publisher ceases to hold publishing rights, or when a publisher withdraws a title. This is, again, where Mei deserves a lot of credit for trolling through licenses to see exactly how these complex conditions were mentioned or not mentioned, which I think has affected both of our eyesight to the negative, but it's fallen for both. So the first time period, with publishers ceasing to hold publishing rights, at first 26% mentioned it, but that fell to 11%. Publishers withdrawing a title: in the first period 21% mentioned it, then it fell to 16%. This is quite interesting that this is falling in licenses; and none of the licenses grant PA when disaster occurs; disaster, acts of God, those sorts of phrases.

There's two other things I want to mention in my time, and that's scholarly sharing and then a little bit about interlibrary loan. So scholarly sharing is sort of a personal bug-bearer of mine. So scholarly sharing is “peer to peer sharing of e-resources, such as e-journal articles, between colleagues across institutional boundaries without the mediation of a librarian,” and model licenses suggest that scholarly sharing be explicitly

recognized within a license. For instance, Liblicense suggests texts such as “authorized users may transmit to a third-party colleague minimal, insubstantial amounts of licensed material for personal, scholarly, educational, scientific or research uses.” We went in to see to what extent licenses, in fact, included this clause, and it made us sad (Figure 4). What we found is, overall, for our set of 224 licenses, 55% acknowledged scholarly sharing, but that percentage was skewed high by the fact that those publishers in the 76 to 100% category, we have a lot of licenses from them, particularly, remember we have a ton of Elsevier licenses, so they are driving up that percentage. There are a whole bunch of publishers down here on the left; 7 out of the 11 publishers showed lower levels of use of scholarly sharing terms. I thought here that the number of publishers not doing it is more interesting than the percent, just because our Elsevier licenses are skewing our percent high. I think for those people who actually license, too, one interesting thing to point out is the variability here. What this means is that, for any given license, for any given

publisher, there are some licenses that include it and some licenses that don't. So it does, in fact, make a difference what you ask for when you are negotiating, because some people get it and some

people don't. It's not a binary with it never being there, always been there; in fact it's sometimes there in some licenses and sometimes it's not.

Okay, last issue: interlibrary loan. In interlibrary loan, we looked just at the most recent controversial issues with interlibrary loans. We looked at two questions. First, is use of a secure e-delivery system, such as Ariel, permitted or required? And then second, we looked at what are called print requirements related to ILL. There are two possible variations of the print requirement. The first I'll call “print first,” and print first is where publishers require the fulfilling library, the loaning library, to print a copy of the requested e-article before scanning the article to make a new digital copy that is then sent to the receiving library through a secure e-transmission system. That's option one; that's the most common, I'll call it print first. And then there's “print delivery.” This is where publishers require that the receiving library only provide a print copy to the receiving patron, not an electronic copy, say, via e-mail or a secure server or whatnot.

And just as kind of a side note, I also talked a lot to scholars, media scholars, in other fields like communication, law, things like that. I have to say, they think this is totally crazy. They can't believe

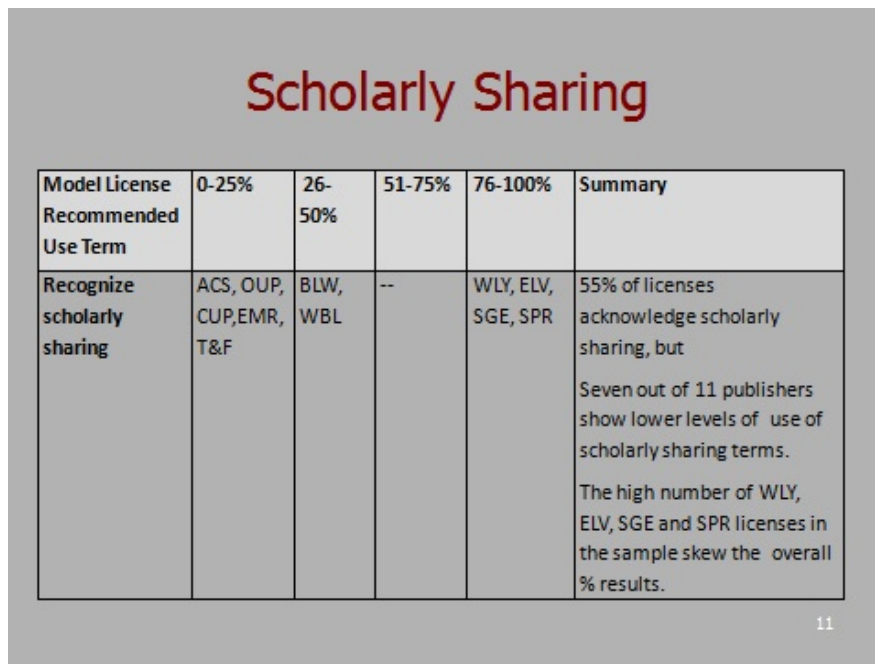


Figure 4. Scholarly Sharing

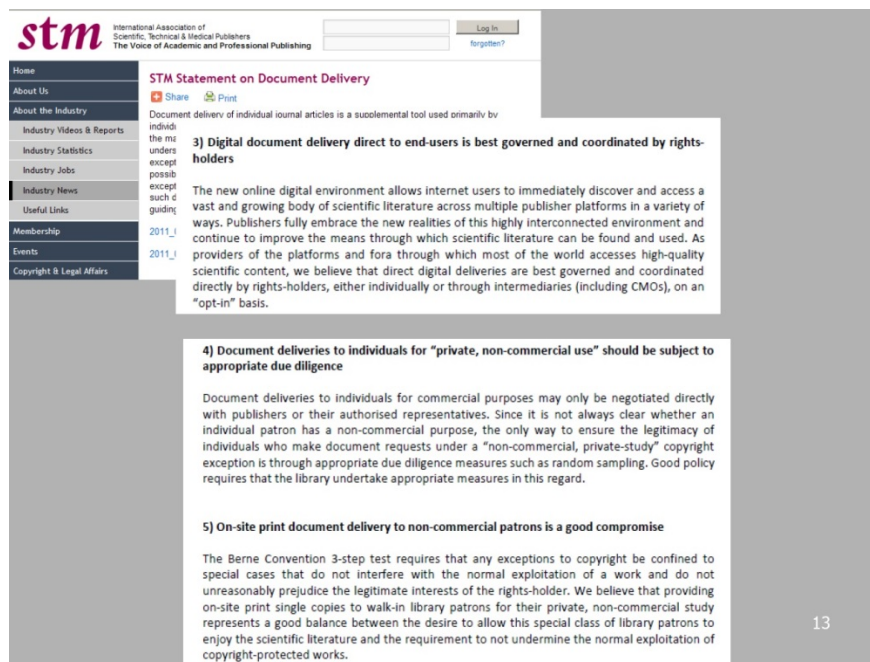


Figure 5. STM Statement on Document Delivery

that this occurs. They're like "Oh my Gosh! Really? The library pays someone to print the stuff out?" This is definitely one of the more bizarre aspects of contemporary librarianship.

This is a hot issue; you all may remember a few years ago there were some news releases, and various scholarly societies, here we have the International Association of Scientific Technical and Medical Publishers (Figure 5) making some very specific claims down in point 5 about how ILL should be done, and basically making the claim that in ILL there should be essentially print delivery; so the receiving library should provide a print-only copy to patrons, not e-copies.

What do licenses do (Figure 6)? First question: is secure e-transmission permitted or required for ILL? Model licenses recommend that licenses either permit or require secure e-transmission, and what we found is the most licenses do; 60% of our licenses did, and 8 out of 11 publishers tended to include this recommendation. ACS and Elsevier licenses in our sample tended not to include this recommended term, but this could be one of these things where they just don't mention it. They didn't forbid it either, so again, I would be interested in hearing from vendor reps about how they interpreted this. And again, we all know this is old data. Elsevier licenses, in particular, have

changed in the interim. A final note: 26 to 50% of Wiley licenses did not do this, but this was premerger. So that changed after the merger.

This is I think the more intriguing one: the print requirement (Figure 7). Model licenses recommend that licenses avoid any print requirement, either the print first or the print delivery. My criteria here was, does the license avoid the print requirement, and most licenses in our sample failed to avoid the requirement. Most licenses did have some kind of print requirement. 79% of the licenses of our sample had some kind of print requirement in them, and it was usually the print first requirement. It's worth noting that 76 to 100% of the American Chemical Society and Sage licenses did avoid the print requirement. But recall that most ACS licenses also did not specifically discuss the secure e-transmission, so again it may be that they just didn't talk about it at all. Sage licenses, on the other hand, both recognize secure e-transmission and specifically avoided the print requirement, so that was a clearer stand. In general, most of the rest of our publishers, so Oxford, Cambridge, Wiley, Blackwell, Wiley Blackwell, Elsevier, Emerald, Springer, Taylor and Francis, failed to avoid the print requirement; but again, this is an area of high flux. Our licenses are old, and we have seen changes in publishers' policies since then. For

ILL e-transmission

Model License Recommended Use Term	0-25%	26-50%	51-75%	76-100%	Summary
Secure e-transmission permitted or required for ILL	ACS, ELV	WLY	CUP, WBL, T&F	OUP, BLW, EMR, SGE, SPR	Most licenses permit or require secure e-transmission for ILL (60%) 8 of eleven publisher licenses tend to include this recommendation.

14

Figure 6. ILL e-Transmission

ILL: Print requirement

Model License Recommended Use Term	0-25%	26-50%	51-75%	76-100%	Summary
Avoids print requirement	OUP, CUP, WLY, BLW, WBL, ELV, EMR, SPR, T&F			ACS, SGE	Most licenses include a print requirement (79%) despite model license recommendation to avoid printing requirements.

15

Figure 7. ILL Print Requirement

instance, Elsevier has a new policy in this area, and if you go to their site it says, "For libraries in the US complying with the CONTU guidelines, it is not necessary to first print an article and then scan it for electronic transmission." So that would move, with Elsevier's new language, they would be way over into the other category; so again, something to watch for, but it has changed.

In summary, what did we learn today? In terms of PA, perpetual access, we learned that back files were rarely explicitly included in the licenses we looked at. Mentions to Portico were very rare, and the special conditions were rarely addressed. In terms of scholarly sharing, we learned that, again, in the licenses that we looked at, that it was definitely not as recognized as it could be, and I

think this is a really interesting question to ask ourselves as information professionals that this is an area of use that users consider totally unproblematic. Why could I not send this one copy to my friend? So do we really want to forbid behaviors that users find totally morally unproblematic, and how does that affect users' perceptions of libraries, publishers, and of licensing as a means to regulate economic transactions between publishers and libraries. And then finally, in terms of interlibrary library loan, we found that in our licenses data set, the print first requirements are unfortunately still very common.

What do we hope to do in the future? This is an area that requires continuous updates, so we are hoping to gather more licenses perhaps in 2013 for the next snapshot. Of course, there are two ways you can get licenses: either we can send out another big public records request, or more hopefully, I hope that publishers would be willing to share copies of their sort of boilerplate licenses

with us that would allow us to get a much better sample, particularly of the non-commercial publishers, of your access and use terms. Again, we don't study pricing, so boilerplate licenses can work okay for us for our terms. We will probably be hitting you up sometime in the next few years for a copy of your use terms. Some of you have them on the web. There are licensing alternatives. What about SERU? I would really love to do a study of SERU. I haven't gotten around to it yet but it's something I would very much like to do. If you would be interested in talking to us about your experiences with SERU, or why you've chosen not to participate in SERU, I would love to hear from you about that. Mei is working with another faculty member on privacy and e-book licenses, so patron privacy clauses; that is very much ongoing work. Mei's dissertation is going to be on selection criteria for e-book packages, so we will have some new data about that in the future. And with that I would like to invite questions, comments, updates. Thank you.