February 2000

Legally Speaking-From Concept to Working Model

Ana Arias Terry

Redstone Publishing Consultanting, ana.terry@redstonepubconsulting.com

Jack G. Montgomery

Western Kentucky University, jack.montgomery@wkyu.edu

Anne F. Jennings

A. Jennings Legal Research and Information, a.jennings@mindspring.com

Follow this and additional works at: <https://docs.lib.purdue.edu/atg>

Part of the [Library and Information Science Commons](#)

Recommended Citation

Terry, Ana Arias; Montgomery, Jack G.; and Jennings, Anne F. (2000) "Legally Speaking-From Concept to Working Model," *Against the Grain*: Vol. 12: Iss. 1, Article 25.

DOI: <https://doi.org/10.7771/2380-176X.3423>

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.

If it's in
the book,

It's on the WEB!

ANNOUNCING

www.
LIBRARIANSYELLOWPAGES.COM

America's #1 Purchasing Directory for
Library and Information Professionals
Is Now on the Web... 1,000+
Publishers and Vendors in Hundreds
of Categories.

If you're among the 50,000 librarians
who already rely on The Librarian's
Yellow Pages, or if you just want to
locate more of the publications, prod-
ucts and services you need faster than
you can say "hyperlink", then be sure
to visit us at:

www.LibrariansYellowPages.com

THE LIBRARIAN'S YELLOW PAGES

2089 Boston Post Rd. • Larchmont, NY 10538 • (914) 834-7070

(800) 235-9723 • Fax: (914) 833-3053

Email: info@LibrariansYellowPages.com • www.LibrariansYellowPages.com

To receive a free copy of The
Librarian's Yellow Pages, or for
Advertising Information, please call,
fax or email.

LEGAL ISSUES

Section Editors: **Anne Jennings** (A.Jennings Legal Research and Information) <a.jennings@mindspring.com>
Jack Montgomery (Western Kentucky University)

Legally Speaking — From Concept to Working Model

Generic licenses effort for e-resources provides more than flexible templates

by **Ana Arias Terry** (President, Redstone Publishing Consulting)
<Ana.Terry@redstonepubconsulting.com>

The virtues of reducing time and money spent on individual license negotiation, agreement development, and institutional and legal compliance¹ have been highly regarded commodities in the publishing industry. Thanks to a suite of generic license models designed to accommodate the needs of librarians and publishers in the electronic resources environment, the desired virtues now reside in a practical and attainable realm.

This article will provide an overview of the model license initiative not just in con-

text of its simplification factor for publishers and librarians, but also in relation to its implications in building community among the diverse publishing constituents. The piece will offer views from the field and conclude with some thoughts on the next steps.

The Models

The US generic licenses initiative evolved in part from an effort by the **UK Publisher's Association** and the **Joint Information Systems Committee of the Higher Education Funding Councils**. After a two-year collabo-

ration, the effort culminated in a model license for electronic resources.

John Cox of **John Cox Associates** used this license as the basis for developing a suite of licenses that would offer an international scope and the flexibility needed to fit the need of diverse scenarios, publisher policies, and customers.

Like many successful initiatives, this one benefited from meaningful collaborations. Funding the effort were five subscription

continued on page 58

agents—Swets, Harrassowitz, EBSCO, Dawson, and Blackwell. The American Library Association et al's *US Principles for Licensing Electronic Resources* and the International Coalition of Library Consortia's (ICOLC) *Statements of Current Perspectives and Preferred Practices for the Selection and Purchase of Electronic Information* provided important concepts as did the LIBLICENSE Website.² Librarians, publishers, and subscription agents worldwide were consulted along with professional and trade associations.³

According to Cox, it was determined early on that four licenses would be needed to cover individual universities, academic consortia, corporate and special libraries, and public libraries. To have developed one all-purpose license would have been too cumbersome and confusing. Still, says Cox, each license is similar in format, and they share numerous "boiler plate" provisions. These models are publicly available at www.licensingmodels.com. "These licenses are not 'off-the-shelf and oven-ready'," says Cox. "They are a resource to be used to construct license agreements. They simply contain the words needed to express what has been negotiated. Think of them as a toolbox."

Sally Morris, secretary-general for the Association of Learned and Professional Society Publishers and primary drafter on the UK's PA/JISC model license effort, offers similar advice. "In principle, my view on model licenses is that they should not be used prescriptively, but rather as source material from which people can draw a number of features, all of which will aid consistency (and accelerate eventual convergence)."

Among the license features whose active use she does encourage are: definitions—where all parties define words to have the same meaning; general order of clauses—where parties can locate the same items in approximately the same location in every license; useful wording—although potentially only very small publishers with no internal experts would use the entire template without modification. "If these elements help to move both publishers and libraries towards a shared understanding of what is fair and reasonable for both sides, that will be a bonus!"

Perceptions from the Trenches

Thus far industry reaction to the generic licenses has been generally very positive. According to Cox, **Purdue University** is using the models to create a Purdue license for obtaining electronic resources. He adds that the **Chesapeake Information and Research Library Alliance (CIRLA)** is modeling its own consortium license based on the generic standard versions.

"So far I have heard nothing negative from librarians," says **Eleanor Cook**, seri-

als specialist at **Appalachian State University**. "The point is to allow continued commerce and not be bogged down with licenses that are impossible to enforce and unwieldy to review. What would be really great would be if a library could sign a single standardized license that would allow a subscription agent to then set up electronic journals on their behalf. Why have to do the same thing over and over and over? I assume that is what this initiative is striving to achieve."

"In quickly reviewing the license for single academic institutions, I find it to be quite impressive, and I particularly like the way it defines terms. I love the concept, and I'm pleased that these licenses have been made available. I applaud the efforts of the people who got together to make these available."

According to **Trisha Davis**, head of the Serials and Electronic Resources Department at **The Ohio State University Libraries**, these initiatives represent the first go at meeting the needs of both librarians and publishers. "Finally, the issues important to librarians are on the table for discussion," says Davis. "These licenses give all parties a starting point for negotiation. No longer should publishers have to start from scratch, or worse, turn over the responsibility to lawyers who know little of the process or the libraries' needs. For librarians, these licenses provide language that can be used to modify poorly written licenses, as well as the support needed to negotiate for the rights they desire."

"I have been working with librarians for over three years now on how to modify and negotiate licenses. This effort is a major step toward standardization, without forcing everyone into a one-fits-all situation. The subscription agencies should be strongly congratulated for their support of this effort."

In the subscription agent camp, satisfaction with the standard models is also evident. **EBSCO Information Services** Vice President and General Manager of Publisher Services **Frank Mapes**, representing one of the supporting agents, is highly pleased with the initiatives.

"The major strength of this effort is the pulling together of a document that has the key elements in it and can be customized without going to a lot of effort. [As] agents, we have always been in the business of helping libraries and publishers with the ordering process. Agents handle the financial transactions, and the license generally is part of the ordering routine. We want to support a standard that reduces the labor intensive review which must occur many times over, if each publisher license is different."

Publishers such as **Lippincott Williams & Wilkins** and **MCB University Press** have been amongst the first to adopt the

licenses. **MCB** was also one of the initial publishers consulted from the early stages of the process. Through the efforts of **MCB Director Bev Bruce**, these licenses are being employed in their negotiations with universities, library consortia, and special libraries. "Besides the important implication to standardization with customization that is inherent in these models," says Bruce, "what is perhaps more significant is that it has been agreed upon by the various bodies in the publishing chain."

Building Community

Agreement is often a precursor to community building and development. While progress can still occur through respectful disagreements between all parties, it is usually at some level of consensus or at least an agreement to disagree that issues can move forward.

There is no question that the generic license models have introduced a much needed and improved dimension to the logistical chess game of license negotiations. Efficiencies in terms of saved money, time, and aggravations are worth their academic weight in gold. But so are the interactive exercises that brought subscription agents, publishers, librarians, and aggregators to the same table for a common goal.

"Whilst not as tangible a benefit as a process that can potentially reduce the amount of negotiation from days to hours," adds Bruce, "it is worthwhile to consider that a qualitative byproduct was strengthened. However unintentional, building community amongst such a diverse group of academic and professional publishing constituents ought to be embraced, noted, and, if possible, recreated, albeit in the new context."

There is comfort in knowing that the generic license initiatives will be kept up-to-date by John Cox Associates and through the suggestions and comments of the industry to reflect the changes in the business environment. But we must also ensure that the interactive process of building community maintains a focus that is just as legitimate and pursued as its more tangible cousin. 🐼

Endnotes

1. Cox, John. "Generic standard licences: Cooperation and competition." (Accepted for publication in *Serials Review*, v.26, no. 1, January 2000).
2. Ibid.
3. Cox, John. July 7, 1999. "Generic standard licensing: At last, model license agreements for use by the journal community." Press release.