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Chad Hutchens

Montana State University, chutchens@montana.edu

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Biz of Acq — Big Deal E-Journals Packages and Third Party Subscription Vendors: Does It Make Sense Anymore?

by **Chad Hutchens** (Electronic Resources Librarian, Montana State University, PO Box 173320, Bozeman, MT 59717; Phone: 406-994-4313; Fax: 406-994-2851) <chutchens@montana.edu>

Column Editor: **Audrey Fenner** (Head, Acquisitions, Congressional Research Service, Library of Congress, 101 Independence Avenue, SE, Washington, DC 20540-7481; Phone: 202-707-6213; Fax: 202-707-7021) <afenner@crs.loc.gov>

Column Editor's Note: *Third party subscription vendors are active in the e-resources field. Chad Hutchens questions the extent of useful services a vendor can provide in this area. For example, should vendors negotiate licenses? Is it a good option for libraries of all sizes to use vendors' services in managing electronic resources? — AF*

Subscription Vendor Services

Subscriptions to both large and small e-journal bundles from publishers have become commonplace in academic libraries during the past few years. It is not the purpose of this article to debate the pros and cons of these e-journal bundles, also known as "big deal" packages; they are a reality. The terms and conditions of these subscriptions are as varied as the titles and publishers themselves; managing the various and complex terms, title lists, contracts, and conditions has been challenging for libraries and subscription vendors alike. Most academic libraries in the United States contract with a third party subscription vendor to handle their e-journal and print subscriptions, whether they are individual titles or large, comprehensive bundles. In return for a fee that is usually based in part on the total cost of a library's serials subscrip-

tions, subscription vendors provide a variety of services to libraries. The utility of these services is important without a doubt, especially to libraries with limited staffing. While subscription vendors have played a central role in managing library subscriptions in the past, the time has come to investigate the usefulness of their services in the "big deal" world.

New Realities and a Hypothetical Scenario

For better or worse, publishers offer comprehensive e-bundle packages where a library pays an annual fee to access all titles that a publisher may offer. This is especially true of the larger publishers in the disciplines of science, technology, and medicine, also known as STM.¹ The price basis of these "big deal" packages varies greatly. In consortial deals, some publishers use a pooled historical (print) title list gathered from multiple institutions while others base the price on FTE, **Carnegie** Classification, or other usage data.² The complexity of pricing models, consortial deals, and even direct-to-publisher deals has created an enormous amount of data that a library needs to have readily available. A library needs ready access to title lists, coverage dates, license details, renewal dates, contact information, access URLs,

and the list goes on and on. In addition, while **ERM (Electronic Resource Management)** systems are alleviating some of the information management burden, we are far from a comprehensive solution. It really is not necessary to describe how completely different managing e-resources is from managing print resources. We all know that it is an enormous and never-ending task. So where does the subscription vendor fit in with "big deal" packages?

Let us consider a hypothetical but completely realistic scenario. A library has existing electronic subscriptions to approximately 100 titles from Publisher X and is interested in licensing access to all of Publisher X's titles for an annual subscription fee. This is the quintessential "big deal" package. Since some subscription vendors are now offering negotiation services,³ the library now considers whether to have their subscription vendor negotiate the deal.

Negotiation: Who Handles It?

The art of negotiation is a skill that is perfected with experience. It is not a skill that is routinely taught in library schools although some, including myself, would argue that it should be.⁴ Some librarians are very astute at negotiating and some are not. As a group, however, librarians are not business-oriented people and we lack negotiation skills. In fact, many of us abhor corporate culture and identify the academy as the culture with which we feel most at home, both personally and politically. It is a simple fact that librarians tend to be poor negotiators by nature. It is my opinion that librarianship could use an injection of the business mentality when it comes to negotiating subscription contracts. That does not mean being unethical, but we should all "go to bat" for our institutions; it is what we are paid to do. Furthermore, it has been my experience that vendor and publisher representatives respect good negotiation and that they are genuinely good people. They are not the prophetic boogey-men that some of us make them out to be. Ask your representative questions, ask for deeper discounts and price caps, be creative, and remember that the answer is always "no" if you never ask.

As much as I would love to see librarians "go to bat" for themselves, we need to ask the question, "Should we ask third party subscription vendors to do our negotiating for us?" Is negotiating contracts a new service for which libraries should pay vendors a percentage fee?

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copyright are personal property. If a curmudgeonly author can refuse to publish his genius work, then a curmudgeonly inventor should likewise be able to deprive the American public of his invention. Or is this always the case using the four factor test? Could either one be forced to license if factor (4) was strong enough?

And of course in the infuriating way of the **Supreme Court**, they don't rule on whether permanent injunctive relief is applicable, but send the thing back to the **District Court** to apply the four factor test.

And There's Concurrence

In a concurring opinion by **Roberts, Scalia and Ginsburg**, factor (4) is discussed. These three note that "[a]n industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing

fees. See **FTC, To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy**, Ch. 3, pp 38-39 (Oct. 2003), available at <http://ftc.gov/os/2003/10/innovationrpt.pdf>.

For these firms the bargaining leverage of shutting down an industry is an enormous edge leading to exorbitant licensing fees. See *ibid*. This seems doubly unfair when the patented method is a very small component of the finished product to be marketed. And then there are the growing number of patents on **business methods** that heretofore did not exist. Vagueness and suspect validity of these patents may force a rethinking of the weights of the four factors. See — "**Chaos Theory Ripples Out of the USPTO**," **ATG**, v.18#3, June, 2006 p.72, noting the famous patents for making a peanut butter and jelly sandwich and the method of swinging on a swing.

So now we can have a fifth factor — shaking down a company through dubious patents.

Think about it; it is an interesting question. Vendors' sales representatives are typically business-oriented; perhaps they would do a better job of negotiating than most librarians. After all, they are employed by for-profit companies and their bottom line depends on how much of a profit margin they can maintain.

On the other side of the argument, we must ask whether a subscription vendor is our best representative, from a legal and ethical standpoint, and whether vendor-conducted negotiation is always possible. Giving a subscription vendor the legal authority simply to activate an e-journal is an issue of legal agency. Many publishers will not allow a subscription agent to activate an electronic subscription. Rather, most publishers require libraries, not subscription agents, to set up authentication and activate online subscriptions.⁵ Activating an electronic subscription is a small fraction of the complete picture. If libraries are interested in letting subscription vendors negotiate and possibly sign subscription contracts, legal power of attorney must also be considered. How much of this process are we willing to let vendors perform (i.e., how much legal power should we give them)? If they are negotiating the contracts, are they also signing them on our behalf? Would that be legal at state-supported institutions? In addition, how are vendors involved in consortial deals? That muddies the waters even more. If we let vendors negotiate consortial deals, are we replacing the consortium with the vendor? Furthermore, there is the issue of industry competition. Would a vendor that hosts a publisher's content on their own platform be the best choice to negotiate a deal with a different vendor that also hosts the same publishers' content? There is a definite possibility for conflicts of interest to arise.

Should subscription vendors negotiate contracts as part of their service? Do we trust them to negotiate pricing, title lists, and rights with the library's best interests, budgets, and curricula in mind? Is it legal to allow them to do this? Obviously, the legal circumstances will vary by institution and by state; the answers to these questions will likely be handled on a case-by-case basis in the near future. It is up to the institution to decide whether this is a good approach.

Old Vendor Service Models...Do They Make Sense in the E-World?

Negotiation questions aside, let us say that our hypothetical library has decided to negotiate their own contract with Publisher X. The next big decision is figuring out if they want to have their subscription vendor pay Publisher X for this package or not. This is not anything new, but in the past year I have come to question the merit of this practice, especially in the case of "big deal" packages. While subscription vendors are offering ERM systems and other services to help libraries manage these huge bundles of e-journals, how much of the managing and work are they, the vendors, actually doing? After all, provision of ERM services is not included in the service fee in most

cases. Furthermore, libraries are maintaining ERM systems themselves. What exactly are libraries getting for the service fees they pay vendors to manage their "big deal" e-journal bundles? First, we must take stock of the work that our sample library has already done, and the situation in which it may find itself.

The library has probably spent two weeks (at a bare minimum) negotiating the deal, deciding if they can afford it, signing contracts, bouncing email messages back and forth, looking at title lists, and maybe performing some overlap analysis. Since this library already had electronic access to approximately 100 titles from Publisher X, it is unlikely that they will have to set up an account or register any IP ranges. Nevertheless, there are the tasks of (1) cataloguing the new titles, (2) adding the titles to their OpenURL resolver's knowledge base, and possibly (3) entering metadata about the new collection into their ERM system. The ERM is capable of storing their historical title list, which may be the basis of their pricing for access to Publisher X's entire collection. Should this library pay their subscription vendor to pay Publisher X in turn for this "big deal" e-journal package?

The library has already done all of the up-front work and will certainly have to do the cataloguing of these new e-journals. Even if the subscription vendor offers a MARC record service to streamline cataloguing, it is not likely included with the standard service fee. To the best of my knowledge, no subscription vendor maintains any library's OpenURL knowledge base; the same can be said of a library's ERM system. At this point, the subscription vendor is being paid 5% (as an example) simply to write a check to Publisher X. In some cases, that 5% fee could be an enormous amount of money, possibly enough to pay a library employee's annual salary. In the print world, in return for this percentage fee, a subscription vendor would order and renew every single title to which the library had a subscription, process claims for damaged or missing issues, and offer other services such as bar coding and labeling that would make journal management easier. In the case of "big deal" bundles, however, those huge lists of individual titles are becoming less and less of a concern. The library now has access to everything that the publisher offers. With the package subscription, there is only one budget line item for Publisher X, not 100, and that is much easier to manage. There will be no lengthy list of titles to renew annually, no claiming of damaged or missing titles, no bar coding, no labeling, nor any of the other services for which libraries pay a service fee to a subscription vendor.

If the library has received very little in return for that 5% fee up to this point, will they receive anything in the future? The answer to that is unequivocally, "Yes." There will undoubtedly be time-consuming problems with access to Publisher X's content, and the subscription vendor will handle those problems. Subscription vendors track publisher changes, cancellations, cessations, access problems, and

provide a host of other services aimed at making e-resources, like their print counterparts, easier to manage. Would that 5% fee cover the annual salary of one person who could perform these same tasks, all the while contributing to the local economy instead of outsourcing the money? That would depend on the position and the locale. Surely there is no question that some libraries simply do not have the resources, either human or financial, to manage every aspect of their e-journal collections. Paying a subscription vendor a percentage fee in those cases makes a lot of sense. However, in the case of "big deal" e-journal bundles, I think it is time to reconsider what services we are willing to pay for, and how much we are willing to pay for what we get.

MSU-Bozeman's Approach

At Montana State University in Bozeman, we have multiple "big deal" e-journal packages from major publishers. Until very recently, our subscription vendor handled these packages. We

decided to bypass our subscription vendor for a number of reasons. We took a close look at the total dollar amount we paid to about a dozen different publishers and decided that we could easily manage those resources on our own, given our level of staffing. With regard to our "big deal" e-journal packages, our Information Resources Development Team handles access problems, checks title lists (the frequency of which depends on the publisher), gathers usage statistics, renews packages, tracks historical title

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lists and costs, etc. We employ a variety of tools including an **ERM** system, for which we contract with a vendor other than our subscription agent, and other homegrown solutions.⁶ In the end, we removed approximately \$1,000,000 from our annual renewal list and saved about \$30,000 in service fees. We have numerous individual electronic subscriptions that we continue to allow our subscription vendor to handle, but we viewed the removal of our "big deal" e-journal packages from our annual renewal list as an effective cost-saving measure. Will our approach work for every library? Certainly not. Should all libraries cut out their subscription vendors (a "stick it to the man" attitude)? Again, certainly not. A subscription vendor's services can be valuable for libraries large and small. In fact, for small libraries, cutting out the agent is likely a bad idea and will result in more work than a small staff can handle. However, I believe this approach is worth considering seriously at most medium-sized and large academic libraries.

New Services and Pricing Models

What new services and pricing might libraries expect from subscription vendors in the newly emerging world of managing "big deal" bundles? Negotiation services have already been discussed as a possibility. If a library does all the negotiating and up-front work, perhaps a lower service fee could be charged for that publisher's package. Perhaps subscription vendors should provide libraries with an **ERM** system as part of the service fee instead of charging an additional fee. Libraries invest huge amounts of money, time, and human resources in maintaining and implementing **ERM** systems, and they have become necessities. In the past, subscription vendors developed tools to make managing print journals easier. These tools included complicated spreadsheets replete with subscription information, billing integrated with ILS acquisition modules, and Web-based administrative portals. It makes sense to me that **ERM** systems replace and supplement many of these older systems, but not for an additional fee. Librarians are performing different tasks with new and different systems, for the same managerial purpose. Perhaps subscription vendors should be maintaining **OpenURL** knowledge bases as part of their fee. Perhaps librarians should demand that publishers allow subscription vendors to activate online subscriptions. Maybe subscription vendors could offer an annual rebate for libraries that have a low number of service requests. These are simply ideas at this point; it is hoped that they will contribute to a long and productive dialogue with our subscription vendors.

Rumors from page 69

agement software for libraries distributed by **OCLC**. **CONTENTdm** software offers a complete set of tools to store, manage and deliver

against the grain people profile

Chad Hutchens

Electronic Resources Librarian

Montana State University

PO Box 173320, Bozeman, MT 59717

Phone: (406) 994-4313 Fax: (406) 994-2851

<chutchens@montana.edu>

BORN & LIVED: Born in San Jose, CA, grew up in Colorado Springs, CO, lived in Austin, TX, Minneapolis, MN and now Bozeman, MT.

EARLY LIFE: Playing in the hills of the Front Range in Colorado.

FAMILY: One older brother, my folks, and my dog, Horatius Cocles.

EDUCATION: BA and MA in Classics from the **University of Colorado** at Boulder, MLIS from the **University of Texas** at Austin.

FIRST JOB: At 14, working the local Mini Golf course for \$4/hr.

PROFESSIONAL CAREER AND ACTIVITIES: First professional job was as the "Digital Learning Services Librarian" at **Augsburg College** in Minneapolis, MN. It was a nice mix of reference, tech services, and Web design. Ultimately, I knew reference was not for me and I landed myself in Bozeman, MT as **MSU's** Electronic Resources Librarian where I can focus my attention on all things electronic. Plans for the near future include releasing a light-weight open-source **ERM** system (aimed at small libraries) built on **PHP/MySQL** and installing a test instance of an open-source federated search engine.

IN MY SPARE TIME I LIKE TO: Run with my dog, pretend that I'm still a competitive triathlete, work on my classic car, listen to Texas country, and explore the open spaces in Montana in any way I can.

FAVORITE BOOKS: *Homer's Odyssey* and *Virgil's Aeneid*.

PET PEEVES/WHAT MAKES ME MAD: Rush hour traffic, crowded ski slopes, and motorists who throw objects at cyclists.

PHILOSOPHY: You work in a library, calm down, no one is going to die!

MOST MEANINGFUL CAREER ACHIEVEMENT: Transforming myself into a technophile from an almost computer illiterate Classicist.

GOAL I HOPE TO ACHIEVE FIVE YEARS FROM NOW: Achieve tenure, develop positive relationships with all of our vendors, become more involved with **NASIG**, and make tangible contributions to the field of e-resources management.

HOW/WHERE DO I SEE THE INDUSTRY IN FIVE YEARS: You never know where we'll end up, but I think we'll likely see the demise of the **OPAC** and our reliance upon it as a front-end tool. In addition, I see the advent of automation in the **ERM** world...or maybe I'm just praying for it?

Endnotes

1. **Hahn, Karla**, "The State of the Large Publisher Bundle: Findings from an ARL Member Survey," *ARL Bimonthly Report* 245 (2006).
2. *ibid*.
3. **Feick, Tina & Herman, Shawn**, "Electronic Journal Subscriptions: The Agent's Perspective," *Against the Grain* v.17, no.6 (December 2005/January 2006): 42-45.
4. **Dames, K. Matthew**, "Buying E-Content: Librarians, Salaries, & Opportunities," *CopyCense* (December 13, 2005), http://www.copycense.com/2005/12/buying_econtent.html.
5. *supra* n. 3.
6. **Marshall, Susan & Kawasaki, Jodee**, "The Master Serial List at Montana State University — A Simple, Easy to Use Approach," *The Serials Librarian* 47, no. 4 (2005): 3-15.

digital collections such as historical documents, photos, newspapers, audio and video on the Web. **OCLC** has been the exclusive distributor of **CONTENTdm** software to libraries, cultural heritage organizations and other nonprofit organizations since 2002. **Greg Zick**, founder of **DiMeMa** and former Professor at the Uni-

versity of Washington, will be Vice President of **OCLC Digital Services**, and will report to **Phyllis B. Spies**, Vice President, **OCLC Collection Management Services**. The **DiMeMa** staff of 11 will maintain its office in Seattle, Washington.

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