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Licensing in an Electronic World: A Word of Advice

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In the June 2007 issue of *Spectrum*,[2] AALL President **Holterhoff** discusses the book *What I Know Now: Letters to My Younger Self*.[3] The book contains letters from several famous women to their "younger" selves. The letters share the authors' insights and describe lessons learned. In reflecting on the message of the book, President **Holterhoff** encourages librarians to actively mentor the next generation. With the fast-paced environment of digital licensing, it seems fitting to consider what we have learned in the last decade[4] and what advice we have for new licensees and licensors. So, here is a letter to my younger, less grey-haired self.

Dear Kara,

I know that when you were initially hired as a collection development librarian, you were not expecting to handle licensing issues. I also recognize that contracts was not your favorite subject in law school. However, understanding licensing from the standpoint of licensor and licensee will be essential to do your job in the information era.

Get Training: While you did not have the chance to take a formal course[5] on licensing in library school, you should be sure to take advantage of alternate training opportunities. For example, online seminars and in-person workshops are often offered through library associations like **AALL**[6] or **SLA**[7] or at conferences like the **SWALL Annual Meeting**[8] or **Computers in Libraries**.[9] As **Matthew Dames** points out in *Information Today*, "[b]uying econtent is serious business. It involves issues that would make any professional's head swim: contract law, conflict of laws, constitutional preemption, copyright law, financing, access, digital rights management, privacy, measurement and metrics…So it's ludicrous, if not negligent, for any organization — especially a library — to leave such serious business for any professional who is unprepared to negotiate million-dollar contracts for the procurement of information."[10] Training, whether formal or informal, is very important.

Monitor Trends: Keeping up with the licensing literature takes time, but can provide fresh perspectives, practical advice and the latest information. Print and online articles about licensing appear in *Against the Grain*, *The Charleston Advisor*, *D-Lib*, *Information Today*, *Journal of Library Administration*, *LLRX*, *Online*, *Searcher*, *Serials Librarian*, *Serials Review*, and many other publications. Using a current awareness resource like **H.W. Wilson's Library Literature and Information Science**[11] database or the *Informed Librarian*,[12] can help you stay current and connected. Look for comprehensive treatments on the topic like *Licensing Digital Content: A Practical Guide for Librarians*[13] by **Lesley Ellen Harris** and *Negotiating Licenses for Digital Resources*[14] by **Fiona Durrant**. Likewise, **Liblicense**[15] is a popular Web resource about licensing. The **Liblicense** email discussion list offers perspectives from librarians, publishers, and subscription agents.

Try Outsourcing: Consider whether license outsourcing can help you save money and time. Some consortia not only negotiate pricing and access, but also tackle the specific terms and provisions in license agreements.[16] They regularly disseminate new product information and arrange trials. Compare terms, pricing and availability among several consortia.[17] There may also be new players in the field such as subscription agents who are constantly redefining their roles in the electronic environment.[18] Look around and see whether outsourcing makes sense for your institution. Proactively ask sales representatives whether their products are available through consortia or subscription agents.

Sign the License As Is: Gasp! I know. You, like most librarians, tend to be detail-oriented and meticulous. You like your I's dotted and your T's crossed. You have been taught to painstakingly review each term in a license agreement, skimming the "good" and hunting down the "bad" and the "ugly," so it is easy to get caught up in the process. Stop driving the publishers crazy by revising every provision in the agreement. You should understand the requirements of your institution, library, as well as patrons and license with those priorities in mind.[19]

Publishers, intermediaries, consortia, library organizations and librarians have made great strides in developing and refining license agreements.[20] Model licenses[21] and principles[22] are freely available for your use, so don't try to reinvent the wheel. The **Shared E-Resource Understanding (SERU)** working group of the **National Information Standards Organization (NISO)**[23] is developing a best practices option to provide a no-license option for interested publishers and librarians.[24] Looking at the bigger picture can help you determine whether the agreement is, on its whole, acceptable as is. If so, sign and return it. Be sure to thank the publisher for drafting an agreement that works for both sides.

Ask for Legal Advice: I know you are hesitant to bother legal counsel because you feel that they are unfamiliar with information procurement or that they have more pressing matters. However, legal counsel can be very helpful in understanding the institution's legal position, state laws, specific contract language, and potential liability. If the library ever receives the dreaded breach of contract letter from a publisher's legal department, you may need to involve legal counsel. As **Steve Jarrett**, General Counsel for the **University of Western Ontario** states, "[i]t is one thing to let problems go, it is another to try actively to solve them yourself. Before you (a) get yourself embroiled in a court case; (b) agree to assume any additional responsibility; (c) tell anyone in any format that the customer/client is a deadbeat; or (d) hire a hit man, a quick call to a lawyer may save you a lot of time and trouble."[25] Also, getting to know publishers' legal counsel is often helpful if sales representatives do not have authority to change the terms of license agreements.

Educate End Users: Breaches such as excessive downloading, reposting materials to Websites or listservs, or allowing others to use login credentials, do occur.[26] To educate both patrons and library personnel, you should regularly post license agreements and access policies for electronic materials.[27] When the patron authenticates, terms of use should automatically display.[28] During formal and informal training, encourage your librarian and publisher colleagues to discuss acceptable and prohibited uses of electronic products.

Preserve the Past for the Future: Give consideration to long-term access and archival issues. As we move from information ownership models to leasing models, we must continue to explore ways to preserve digital information. As **Sharon Farb** in her article "Libraries, Licensing and the Challenge of Stewardship" reminds us "licensing of digital resources, as currently practiced, has significantly affected the library's traditional stewardship role, and has begun to displace time-honored and federally-protected educational and non-commercial uses of information, such as fair use, preservation and archiving. Hopefully, these initial findings will provide a starting place for discussion, further research and action which will include benchmarks and frameworks for keeping all stakeholders informed, so that scholarship created today will be preserved and endure for generations to come."[29] Determine your library's role in archiving and preserving information for future patrons.

Fight Inertia: After the license agreement has been signed, don't sit back and let the "automatic renewal clause" do its work year after year. Electronic products, just like their print counterparts, should be systematically reviewed upon renewal. Explore competitor products. Get feedback from your patrons. Analyze usage statistics.[30] Review your existing license agreements and determine whether they should be revised to incorporate new institutional needs or technologies like distance courses and course management software linking. Ask your sales representative if their license agreement takes into account newly permitted uses.

Cultivate Lasting Relationships: Negotiating ethically and honestly can go a long way toward fostering good working relationships. Clear and predictable pricing and usage metrics are invaluable. Building good will and trust is essential. As **Sam Brooks** writes in *Library/Vendor Relationships*, "libraries can provide better service to their end-users if vendors can better equip the libraries to do so. For vendors to accomplish this task, they often rely heavily

upon libraries for the insight and direction to improve products and services. Thus, dependence is evident in this circular pattern, and forging strong relationships is key to the continued development of products and services for use by librarians and patrons."[31] Librarians and publishers are in it for the long term, no matter whether we use licenses or not.

Also, a bit of advice: buy stock in **Google** before it goes public!

With high hopes for the future,
Kara Phillips 🌲

Endnotes

1. **Kara Phillips** is the Associate Director and Collection Development Librarian at **Seattle University Law Library**. She earned her B.A. *magna cum laude*, J.D. with Honors, and M.L.S. from M.A.I.S. in China Studies at the **University of Washington**. **Ms. Phillips** has worked as a librarian for the Washington State Attorney General's Office, Washington State Department of Retirement Systems, Gallagher Law Library East Asian Law Department and Lane Powell Spears Lubersky. Recipient of a Blakemore Fellowship, she studied Mandarin Chinese at the Stanford Center in Taipei, Taiwan. **Ms. Phillips** also writes and lectures in the area of intellectual property law. **Kara**'s email address is <Phillips@seattleu.edu>.

2. **Sarah Holterhoff**, "What I Know Now-Thoughts on Mentorship and Leadership," *AALL Spectrum 11, no. 8* (2007): 4.

3. **Ellyn Spragins**, ed., *What I know Now: Letters to My Younger Self* (New York: Broadway Books, 2006).

4. For a history of licensing, see **David C. Fowler**, "Licensing: An Historical Perspective," in *Licensing in Libraries: Practical and Ethical Aspects*, ed. **Karen Rupp-Serrano** (Binghamton, NY: Haworth Information Press, 2005), 177-197.

5. **Lorraine Busby**, "Teaching Vendor Relations in the LIS Curriculum," *The CRIV Sheet, 29, no. 2* (February 2007): 3-4, available at: *http://www.aallnet. org/products/pub_sp0702/pub_sp0702_CRIV.pdf* (Accessed June 22, 2007).

6. **Licensing 101 for Law Libraries: The Basics** *http://www.aallnet.org/ calendar/eventdisplay.asp?eid=175&arc=no* (Accessed June 18, 2007). This online course, offered through AALL, is a great introduction and refresher.

7. **Digital Content Management** *http://www.aallnet.org/calendar/event-display.asp?eid=175&arc=no* (Accessed June 18, 2007). This course is part of SLA's Click University.

8. **Anna Teller** and **Jim Heller**, "Licensing and Copyright: Negotiating Licenses Rocky Balboa Style" *http://www.aallnet.org/chapter/swall/ meeting2007/finalprogram.htm* Final Program Description for the 2007 Southwestern Association of Law Libraries Annual Meeting (Accessed June 18, 2007).

9. **K. Matthew Dames**, "Buying Digital Content: Negotiating Licenses for E-Content" *http://www.infotoday.com/cil2006/postconference.shtml* Post-Conference Workshop Description for the 2006 Computers in Libraries Conference (Accessed June 18, 2007).

10. **Matthew Dames**, "Librarians and Licensing," *Information Today, 24, no. 3* (2007): 18 Academic Search Complete, EBSCOhost (accessed June 13, 2007). Interestingly, the author also points out that "[t]he contemporary content-procurement professional is called a content manager, a scholarly communication officer, or even a director of information resources. But if the position is called a librarian, chances are it will not command the organizational respect, compensation, and resources it deserves." Ibid.

11. **H.W. Wilson Library Literature and Information Science** *http://www. hwwilson.com/Databases/liblit.htm#Index0* (Accessed June 21, 2007).

12. Informed Librarian Online *http://www.informedlibrarian.com* (Accessed June 21, 2007).

13. **Lesley Ellen Harris**, *Licensing Digital Content: A Practical Guide for Librarians*, (Chicago: American Library Association, 2002). Required reading in the licensing arena.

14. **Fiona Durrant**, *Negotiating Licenses for Digital Resources*, (London: Facet, 2006). Very helpful information with a distinctly British tone.

15. Liblicense *http://www.library.yale.edu/~llicense/index.shtml* (Accessed on June 19, 2007).

16. The **New England Law Library Consortium (NELLCO)** *http://www. nellco.org/* is a case in point. **Tracy Thompson**, Executive Director of **NELLCO**, writes, "During the course of the trial, the terms of the license agreement are negotiated. **NELLCO**'s standard license agreement (*www. nellco.org/index.cfm?page=licensing*) was revised in July 2004 by the Standing Licensing Committee, and our goal is to employ that license whenever possible. Usually there is a process of negotiation that results in a final license unique to the resource at hand. Most vendors will permit the license to be signed at the consortium level on behalf of the member libraries. The license will include an addendum listing all of the libraries represented by the license. In some instances the information provider requires that each library sign a separate license agreement. In those cases an approved license will be distributed to members for their local execution." **Tracy Thompson**, "Collaborative Acquisition of Electronic Resources," *The CRIV Sheet, 27, no. 3* (May 2005): 5, available at: *http://www.aallnet.org/products/pub_ sp0505/pub_sp0505_CRIV.pdf* (Accessed June 22, 2007).

17. For a list of United States consortia, see **Libraries on the Web USA Consortia** *http://lists.webjunction.org/libweb/usa-consortia.html* (Accessed on June 21, 2007).

18. **Association of Subscription Agents and Intermediaries (ASA)** *http://www.subscription-agents.org/index.html* (Accessed on June 19, 2007); **Vicki Nicholson** and **Heather Layton**, "Adding a Corner to Triangle – Subscription Agents, Librarians and E-Journals," paper given at the Information Online 11th Exhibition and Conference 2003 of the Australian Library and Information Association (October 14, 2003) *http://conferences.alia.org. au/online2003/papers/nicholson.html* (Accessed on June 19, 2007); **Tina Feick**, "Electronic Journal Subscriptions: The Agent's Perspective," *Against the Grain* 17, no. 6 (December 2005-January 2006): 42-45.

19. **Kara Phillips**, "Deal or No Deal: Licensing and Acquiring Digital Resources – Deal Breaking License Clauses," *LLRX.com* (March 18, 2007) *http://www.llrx.com/columns/deal4.htm* (Accessed on June 19, 2007).

20. Frankly, I hold librarian/library licensors to a higher standard with their license agreements and am dismayed when those agreements are more restrictive than many publisher agreements. I understand that licenses are written to protect the librarian/library as a publisher, but I expect that librarian/library licensors will consider model licenses and principles.

21. For more information on model licenses, see **Stephen Bosch**, "Using Model Licenses," in *Licensing in Libraries: Practical and Ethical Aspects*, ed. **Karen Rupp-Serrano** (Binghamton, NY: Haworth Information Press, 2005), 65-81.

22. Examples include **Principles for Licensing Electronic Resources, AALL** (November 2004) *http://www.aallnet.org/committee/reports/Licens-ingPrinciplesElecResources.pdf*; **Statement of Current, Perspective and Preferred Practices for Selection and Purchase of Electronic Information, ICOLC** (2004) *http://www.library.yale.edu/consortia/statement.html*; **Licensing Principles, IFLA** (2001) *http://www.ifla.org/V/ebpb/copy.htm*.

23. For an overview of **NISO** and its projects, see **Pat Harris**, "Library-Vendor Relations in the World of Information Standards: A View of a Partnership that Improves Research, Information Access, and Revenue Opportunities," in *Library Vendor Relationship*, ed. **Sam Brooks** and **David Carlson** (Binghamton, NY: Haworth Information Press, 2006), 127-136.

24. **Karla Hahn**, "Do I Have to Negotiate a License for Every E-Resource I Buy? Developing a Best Practice Option," *ARL: A Bimonthly Report on Research Library Issues and Actions from ARL, CNI, and SPARC, no. 248* (2006): 11; **Judy Luther**, "Streaming the Supply Chain," Informed Strategies (March 2006) *http://smartech.gatech.edu/dspace/bit-stream/1853/10071/2/20060320_BestPracticeOption.8.pdf* (Accessed June 20, 2007); **Todd Carpenter**, "Standards Column-Ready to Work Without a License? NISO's Shared E-Resource Understanding (SERU) Working Group," *Against the Grain* 19, no. 2 (2007): 92; "Overview of SERU Initiative" *http://www.niso.org/committees/SERU/SERU_FAQ.html* (Accessed June 18, 2007).

25. **Steve Jarrett**, "When to Call a Lawyer," *The CRIV Sheet, 29, no. 2* (February 2007): 4, available at: *http://www.aallnet.org/products/pub_ sp0702/pub_sp0702_CRIV.pdf* (Accessed June 22, 2007).

26. **Gayle Baker** and **Carole Tenopir**, "Managing the Unmanageable: Systematic Downloading of Electronic Resources by Library Users," in *Library Vendor Relationship*, ed. **Sam Brooks** and **David Carlson** (Binghamton, NY : Haworth Information Press, 2006), 11-24; **Ellen Finnie Duranceau**, **Deanna Graham**, and **Stephen Martin**, "After the License is Signed: Collaboration to Resolve License Breaches," *The Serials Librarian, 48, no. 3/4* (2005): 339-342. In these articles, the authors provide examples of license breaches and how they were able to work directly with technology, specific departments and their vendors to resolve the problems.

27. **Tony Horava**, "Access Policies and Licensing Issues in Research Libraries," *Collection Building, 24, no. 1* (2005): 9-11.

28. **Jill Emery**, "Is Our Best Good Enough? Educating End-Users About Licensing Terms," in *Licensing in Libraries: Practical and Ethical Aspects*, ed. **Karen Rupp-Serrano** (Binghamton, NY: Haworth Information Press, 2005), 27-39.

29. **Sharon Farb**, "Libraries, Licensing and the Challenge of Stewardship," *First Monday. 11, no. 7* (July 2006): 23, available at: *http://www.firstmonday. org/issues/issue11_7/farb/index.html* (Accessed June 22, 2007).

30. **Project Counter** provides international standards for online usage data for Journals and Databases as well as Books and Reference Works. **Project Counter** *http://www.projectcounter.org* (Accessed June 22, 2007).

31. **Sam Brooks** and **David Carlson**, eds., *Library/Vendor Relationships* (Binghamton, NY: Haworth Information Press, 2006).