

CHAPTER 4

LICENSES FOR E-CONTENT

ENTIRE BOOKS HAVE BEEN written and workshops given that address the process of reviewing and negotiating agreements to acquire and access e-content. By necessity, this chapter is an introduction to this complex topic and explains why these agreements are important, identifies key license elements, and suggests best practices for libraries engaged in negotiating contracts and licenses.

LICENSE TERMINOLOGY

Terminology is a good place to begin. A license (sometimes called a licensing agreement) grants permission to do something which, without such permission, would be illegal. A license for e-content is a contract that presents the terms under which a vendor, publisher, or distributor grants access to a library or sells content to a library. A contract is a formal, legally binding, written agreement between two or more parties. Failure to fulfill the terms of the license is called a breach. A major or persistent breach of contract can result in penalties, which might be a fine, immediate termination, a lawsuit, or all three.

Licenses for e-content are matters of contract law and take priority over copyright law. Once a license is signed, fair use and other rights granted under copyright law are superseded by the terms of the contract. Thus, for example, the doctrine of first sale (section 109 of the U.S. Copyright Act), which permits libraries to lend materials once ownership has transferred to the library, does not necessarily apply to e-content, particularly if the library is not purchasing the content but only paying for the right to access it for a period of time.¹ Licensing and DRM systems have shifted the focus from reliance on copyright laws to the provisions of the license that determine what can be done with the e-content. DRM systems serve to enforce and sometimes extend the scope of the license.

The legal environment is complex because of constantly changing technologies, new business models, and new offerings from vendors, publishers,

and distributors. Libraries are challenged to make the best deal possible when negotiating e-resource licenses.

Heavy and increasing user demand for e-content puts pressures on libraries to provide as much as possible and as quickly as possible. A valuable website for librarians seeking to learn more about licensing is LIBLICENSE (<http://liblicense.crl.edu>). This site provides resources, including model license language, a model license, and detailed discussion of licensing terms. Another resource is LicensingModels.org (www.licensingmodels.org). This site offers six model licenses for use by publishers, librarians, and subscription agents for electronic resources. The licenses are designed for use by a single academic institution, academic consortia, public libraries, and corporate and other special libraries. In addition, it provides model licenses for e-book and journal archive purchases and licenses for a thirty- or sixty-day free trial.

IMPORTANCE OF LICENSES

Licenses for e-content are legally binding agreements enforceable by law. That fact alone should make clear their importance. The licensor can ask whatever price and set whatever conditions on use the licensee will accept. Signing a license binds the signatories to comply with all obligations set out in its clauses. A library should ensure that the conditions placed on it and its users are not onerous. By signing the license, the individual who does so is committing the library to abide by it.

Licensed e-content is not covered by the fair use provisions of U.S. copyright law. A library will find that licenses frequently prohibit many of the uses (circulating, placing on reserve for a course, providing through ILL, etc.) it has traditionally made of its materials. Understanding what is prohibited and permitted in a license is essential.

Licenses have consequences if the obligations specified in them are not met. If a library exceeds the activities agreed on or the approved uses specifically set forth in the license, it is in breach of the license. Failure to meet obligations can result in fines or termination of access. Understanding these consequences is critical, as is deciding if they are acceptable.

In private life, individuals are constantly advised never to sign an agreement before reading it carefully and understanding what it entails. Libraries signing licenses for e-content should follow this advice no less rigorously.

KEY ELEMENTS IN LICENSES

Licenses usually begin with definitions, followed by clauses that lay out the

terms of the license, attachments, and finally signatures by those authorized to sign contracts on behalf of the licensor and licensee.

Definitions, which identify all potentially disputable terms, usually appear first in a license. Two important definitions explain what is meant by authorized user(s) or authorized patron(s) and authorized site(s). Authorized users are those individuals authorized under the contract to use, access, or download the product. The authorized site is the location where the licensee provides access to the e-content. Licenses that govern downloading of e-content to handheld devices generally do not include a definition of authorized site. Additionally, the e-content or product is defined. For example, a contract for e-books downloadable to personal devices might state, “Content shall consist of digital files and titles available for loan to patrons at the licensor’s website.”

Terms specify the rights and responsibilities of the licensor and licensee. Most licenses have standard elements, although the manner in which each issue is addressed can vary. The type of e-content (e.g., databases, e-books, media) covered by the license also can affect the clauses and their terms. Usual elements in licenses speak to

- delivery and access, including authentication
- authorized uses, including any restrictions on use
- licensor obligations
- licensee obligations
- term of the agreement, including processes for renewal and early termination
- warranties, indemnities, and limitations on warranties
- governing law and dispute resolution
- nondisclosure
- force majeure
- fees and payment

Delivery and Access

A clause found in nearly all licenses addresses how the content will be delivered and accessed, often via remote access to the licensor’s server from which it can be viewed and downloaded in whole or part. In some cases, the licensee receives the content and houses it in a local server for user access. Authentication is the process that verifies the identities of users before access is granted. Common methods of authentication are passwords and user IDs, library cards, IP addresses and secure proxy servers, public keys, digital certificates,

and federated authentication protocols such as Shibboleth. In 2011, the National Information Standards Organization published *ESPreSSO: Establishing Suggested Practices Regarding Single Sign-On*, which recommends solutions for improving the use of single sign-on technologies to ensure a seamless experience for users.² *ESPreSSO* aims to mitigate the growing complexity of licensing situations and network design and the increasing use of mobile devices, which have created a confusing and error-prone environment for users, licensors, and service providers.

A subset of licenses for e-content is that for media, which often includes a particularly restrictive set of access principles unfavorable to instruction and research. This is especially the case when licensing online, on-demand video and music with their associated intellectual property concerns. Music and film rights owners generally have not settled on a business model for granting distribution rights to distributors. Image licensing tends to be less restrictive, and some vendors offer reasonable terms and conditions. Most distributors of on-demand video license access to individual titles for a fixed term (usually one to five years). Renewal of the license is generally dependent on the distributor's contractual terms and arrangements with the filmmaker.

Authorized Use

Authorized uses and restrictions on use define the rights granted or denied under the license. By contract law, any rights not expressly granted in the license are reserved to the licensor. Typical rights granted to the licensee are users' rights to search, browse, retrieve, view, display, download, print results, and store or save the content for a specific period. Some licenses do not permit printing of any content and may have DRM systems in place that disable cut-and-paste. Rights granted may include, for example, users' ability to forward an e-journal article electronically to themselves or to other persons. Restrictions may include a limit on the number of times an e-book can circulate or may limit circulation to a single user at a time (the "one book, one reader" model). Most contracts explicitly prohibit copying substantial portions of a database or a single book, downloading or printing entire issues of a journal, modifying search software or content, or disabling the DRM system. Authorized use may be restricted to, for example, academic, scholarly, or noncommercial use. Some academic libraries are seeking to add the ability of authorized users to perform text or data mining for academic research and other educational purposes.

Academic libraries often seek the right to use the product in ILL transactions, distance education, course packs, course reserves, and course management systems. These rights are, however, often prohibited in licenses and, in addition, may be limited by the DRM system controlling the product. Thus, even though libraries do get fair use rights under the U.S. Copyright Act to lend items to other libraries under certain conditions, the DRM-protected files and license terms, which take precedence, mean that libraries often cannot exercise the rights granted by law. A typical clause authorizing ILL might state, "The Licensee may supply to another library at the request of a patron thereof (whether by post, fax, or secure transmission), for the purposes of research or private study and not for commercial use, a single paper copy of an electronic original of an individual document being part of the Licensed Content." Note that this authorized use requires using a paper copy of the e-content for ILL. At this point, few licensors permit ILL of e-books and many prohibit its use for course reserves. At the time of this writing, Springer was one of the few publishers offering an option with ILL privileges. Project MUSE, which began adding university press books in 2011, permits using a single copy of an individual e-book chapter in response to an ILL request.³ Restricting ILL can be of concern for consortia that seek to increase the number of titles available to their members with fewer copies of a single title held locally.

The licensor may reserve the right to modify services and content with or without notification. A typical clause might state that the licensor reserves the right at any time to withdraw any title, item, or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyrights or is defamatory, obscene, unlawful, or otherwise objectionable. This means that the licensor can remove, replace, edit, or modify content. Libraries are familiar with the frequency with which aggregators of e-journals add and remove titles. Aggregators of e-books may remove a title at the request of the copyright holder. For example, Amazon deleted some digital editions of George Orwell's *Animal Farm* and *1984* from Kindles of readers who had bought the books.⁴ Even more troubling to libraries is the ability to modify the original text without notification or use of tracking, versioning, archiving, or other means that might provide access to the original content.

Obligations

Licensor obligations always should include providing the content that is being licensed. Other frequent obligations are training library employees, provid-

ing technical and perhaps user support as well as documentation, replacing defective products, guaranteeing hours of access and service, hosting a website customized to the library and the product, providing use statistics, and protecting the privacy of users.

Protecting user privacy is a long-standing principle and value in libraries and often mandated by state confidentiality laws and library privacy policies. The American Library Association states that “privacy is essential to the exercise of free speech, free thought, and free association” and that, “in a library (physical or virtual), the right to privacy is the right to open inquiry without having the subject of one’s interest examined or scrutinized by others.”⁵ In fall 2011, libraries learned that their users who loaded e-books provided by OverDrive onto Kindles were being tracked by Amazon. When the loan period for an e-book on a Kindle was nearly over, Kindle users received messages from Amazon asking if they wanted to buy the e-book. Although OverDrive did not track or provide user information, Amazon required users to log in with their Kindle accounts to access the borrowed book, which Amazon then used for marketing. Some libraries responded by posting notices to their users that using a Kindle to download e-books took them away from the libraries’ privacy policies. OverDrive’s terms and conditions reference the OverDrive privacy policy, which states:

OverDrive may also use and share non-personally identifiable information, such as general demographic or location information, or information about the computer or device from which you access the Services. Additionally, we may anonymize personal Information and share it in an aggregated form with third parties, advertisers and/or business partners in order to analyze service usage, improve the OverDrive service and your experience, or for other similar purposes. The use and disclosure of such information is not subject to any restrictions under this privacy policy.⁶

Carefully reviewing the OverDrive license would suggest that users’ privacy is protected, but the OverDrive license does not cover Amazon behavior. Caldwell-Stone observed, “Libraries, anxious to provide users with a popular, in-demand service, did so without carefully evaluating the service’s impact on user privacy.”⁷ She advises libraries to examine agreements and the technologies and platforms that control delivery of e-content thoroughly.

Of increasing importance is a licensor obligation to provide supporting assistive software or devices designed to comply with the requirements of the Americans with Disabilities Act.⁸ An important source are the “Web Content Accessibility Guidelines” published by the World Wide Web Consortium.⁹

Additionally, libraries often seek to obligate licensors of e-books to provide MARC records for loading into a local catalog. This obligation specifies the library’s expectations for quality, accuracy, format, and currency of these records. If the library is required to pay for the records, this is specified in the fees section of the contract.

Licensee obligations generally address the level and type of security the library must provide to ensure that only authorized users can access the content and that use is limited to that authorized under the license’s terms. The licensor’s intent is to protect intellectual property interests. Libraries should not promise to prevent all misuse (as defined in the license) of the product, but they can agree to take reasonable and appropriate measures to prevent it, notify the user community of all restrictions, and carry out due process when a user violates the license. The library may be obligated to keep appropriate documentation regarding practices in place and provide the licensor access to validate total number of downloads.

Term of the Agreement

The clause dealing with the term of the license (sometimes called duration of grant of rights) lays out when the agreement becomes effective and its duration, which may or may not match the term of the subscription. This section usually includes the processes for renewal and early termination. Many licenses contain a provision for automatic renewal unless either party gives written notice of intent not to renew. Usually this notification must be given a set number of days before the expiration of the current term. The section dealing with early termination specifies under what conditions the contract can be terminated, which might be licensor or licensee failure to fulfill obligations or deception in the warranties. For example, the licensor may specify immediate termination of access in the case of a security breach. Libraries usually ask for a cure period (often thirty days) in which to remedy or correct any breach. Libraries may negotiate adding a clause that permits early cancellation in the case of financial exigency.

An important concern for most libraries is the issue of continuing access to the content when the license is terminated or the licensor ceases to offer the product. Unlike subscriptions to print publications, a library does not auto-

matically get to keep the e-product to which it had access during the term of the license. The section dealing with the term of the license may address this, or it may be dealt with elsewhere. Ideally, a license should include provision for affordable, perpetual access to the licensed content by some appropriate and feasible means. Some licenses may grant the library the right to make and save a copy of the content during the duration of the contract or permission to create backup copies for preservation purposes, but this places the onus on the library to have storage and access mechanisms in place either on-site or through a service provider. An example clause might state, "On termination of this License, the Licensor shall provide continuing access for library staff and patrons to that part of the Licensed Materials which was published and paid for within the subscription period, either from the Licensor's server or by supplying electronic files to the Licensee, except where such termination is due to a breach of the License by the Licensee that the Licensee has failed to remedy." If a license agreement does not permit the licensee to make a preservation copy, a license agreement should specify who has permanent archival responsibility for the resource and under what conditions the licensee may access or refer users to the archival copy. Some publishers provide perpetual access through archiving programs such as LOCKSS, CLOCKSS, or PORTICO to ensure that the content remains available if the publisher ceases the publication or goes out of business.

The question of e-content ownership at the termination of an agreement was the topic of a 2011 dispute when the State Library of Kansas opted not to renew its contract with OverDrive, through which 330 public libraries across Kansas accessed e-books.¹⁰ OverDrive proposed a contract renewal that would have increased administrative fees for the platform from \$10,000 to \$75,000 a year by 2014. Jo Budler, director of the State Library of Kansas, noted that the new agreement also removed language that recognized the library's ownership of materials and its right to transfer content to another service provider. When further negotiations with OverDrive failed to reach an acceptable agreement, Budler did not renew the contract. She enlisted the support of Jeff Chanay, the Kansas deputy attorney general for the civil litigation division, who took the position that the State Library owned the content. The State Library then contracted with 3M for its Cloud Library e-book service and began seeking permission from 169 publishers to move the e-books to the new services without having to pay a new fee. Most publishers have agreed with this request. Although libraries will not likely find themselves in the same situation, this dispute makes clear the importance of carefully reading licenses, including revisions presented at the point of renewal.

OPTIONS FOR PERPETUAL ACCESS

Portico (www.portico.org) is a nonprofit digital preservation service provided by ITHAKA that maintains a permanent archive of electronic scholarly journals and books. Participating libraries are provided with campus-wide access to archived content when specific trigger events occur, including when titles are no longer available from the publisher or other source. Portico also provides a reliable means to secure perpetual access when a participating publisher chooses to designate Portico as a provider of post-cancellation access. Participating libraries make an annual support payment based on their total library materials expenditures.

LOCKSS (Lots of Copies Keep Stuff Safe, www.lockss.org), a nonprofit service under the auspices of Stanford University, develops and supports an open-source system for digital preservation that allows libraries to collect, preserve, and provide their users with access to e-content. It operates on a distributed network of preservation appliances (called LOCKSS Boxes) and allows libraries to collect, store, preserve, and provide access to their own, local copies of e-content. LOCKSS is a "light" archive—the content is currently accessible under the terms of applicable licenses. Each library's system collects a copy using a specialized web crawler that verifies that the publisher has granted suitable permission. Libraries that have collected the same material cooperate in a peer-to-peer network to ensure its preservation and a high degree of replication. Each library is responsible for creating its local LOCKSS Box, installing the open-source software, and maintaining the hardware and software. LOCKSS aims to provide 100 percent post-cancellation access.

CLOCKSS (Controlled LOCKSS, www.clockss.org) builds on the LOCKSS technology and directly engages scholarly publishers in preservation of their digital output in a "dark" archive of geographically dispersed nodes at fifteen major research libraries. Content preserved in CLOCKSS can be accessed only when a trigger event is deemed to have occurred. CLOCKSS makes all content triggered from the archive freely available to the world. Libraries and publishers pay an annual fee to participate.

Warranties, Indemnities, and Limitations on Warranties

Warranties are promises made by parties to the license. The licensor may guarantee hours of access or server performance for a remote resource. Another typical warranty is assurance that the licensor legally owns the copyright to or the content of the product. Indemnification is one party's agreement to insure, shield, or otherwise defend another party against third-party claims resulting from performance under the agreement. A warranty guarantees the rights, and the indemnity provides for financial compensation should the warranty prove false. Libraries should seek license agreements that require the licensor to defend, indemnify, and hold the licensee harmless from any action based on a claim that use of the resource in accordance with the license infringes any patent, copyright, trademark, or trade secret of any third party; in other words, the licensor affirms that it has legal right to use the content provided. This ensures that the library cannot be accused of copyright infringements as long as use abides by the license terms.

A licensor may ask a library to indemnify the licensor against misuse or abuse by the library's authorized users. Libraries generally should not accept a clause requiring indemnification against misuse by its patrons; many public institutions in the United States are prohibited from indemnifying licensors or holding them harmless to other parties. A library may agree elsewhere in the license to take all reasonable and appropriate measures to protect the licensed product from misuse, but it should avoid promising that its users will never abuse their rights. A license should require the licensor to give the library notice of suspected or alleged license violations that come to the licensor's attention and to allow a reasonable time for the library to investigate and take corrective action, if needed.

A limit of liability clause sets out how much and what kind of damages will be paid for remedies. Penalties are applied when contractual obligations are breached. For example, a library may be charged a penalty fee for late payment. Access may be withheld until the breach is resolved.

Governing Law and Dispute Resolution

Governing law identifies the state or country (venue) and its laws under which a dispute relating to the license will be adjudicated. Libraries usually negotiate for jurisdiction in the state in which they are located; a licensor usually prefers the state or country in which its primary office is located. A compromise revision might state that cases will be adjudicated in the courts of the state in which the claim is brought.

Nondisclosure

A nondisclosure agreement (sometimes called a confidentiality clause) is a provision in a license in which the parties agree to refrain from disclosing or making public certain information outside a mutually agreeable scope. Such nondisclosure clauses often prohibit the library from sharing information about the price being paid to purchase or access the content or details about how the price is determined. The licensor may promise a lower cost if the library agrees not to share pricing information; it may state that finalizing a contract is contingent on accepting the nondisclosure provision. However, mandated confidentiality hampers effective negotiations if libraries do not know what other libraries are paying or details involved in determining cost. The International Coalition of Library Consortia issued a statement in 2004 on preferred practices that states "non-disclosure language should not be required for any licensing agreement, particularly language that would preclude library consortia from sharing pricing and other significant terms and conditions with other consortia."¹¹ In 2009, the Association of Research Libraries board of directors approved a resolution that strongly encourages its member libraries to refrain from signing agreements with publishers or vendors, either individually or through consortia, that include nondisclosure or confidentiality clauses.¹² Nondisclosure clauses are not considered a deal breaker in all libraries, but some libraries are mandated either by law or policy to make this information public upon request and cannot accept a nondisclosure condition. Libraries benefit from knowing what their peers were able to negotiate in both the terms governing a specific product and the fees charged for it.

Force Majeure

Force majeure means that neither party shall be found at fault to the extent that performance of obligations or attempts to cure any breach are delayed or prevented by reasons of any act of God, natural disaster, accident, act of government, shortages of materials or supplies, or any other causes beyond the control of such party.

Fees and Payment

The section on fees and payments lays out the cost, how it is determined, and a payment schedule. Fees can vary widely. The final price is determined by the business model selected and the results of negotiation. The business model may be one book/one user, a set number of simultaneous users, unlimited

simultaneous use, subscription, patron-driven acquisitions, or pay-per-view charged to the library or, more rarely, the user. It may be based on the number of users, size of the institution, or number of transactions (which may be logins, searches, downloads, etc.). Fees may include system, access, and hosting fees or a fee to provide a customized, hosted website through which users access the content. Some suppliers calculate annual fees based on existing collection use data. If a library inadvertently leases a title that suddenly becomes popular, the charge may be more after the sale.

Attachments and Signature Page

Licenses frequently contain supplementary documents, called attachments. These generally set the terms of payment or payment schedule. They may list titles included in a package. For example, a license may define the product by referencing the details provided in an attachment. Attachments are legally part of the license and equally binding.

The final element in a license is the section where it is signed and dated by authorized representatives of the licensor and the licensee. The signature must be provided by a person with authority and power to represent and legally bind a party to a written contract. In some instances, an individual signing a license beyond his or her authority may be held personally liable for enforcing the license or paying damages if the license is breached.

BEST PRACTICES

After slogging through the key elements in licenses, the reader may wonder if legal training is a requirement to understanding and negotiating licenses. The simple answer is no. Having a familiarity with the terms and their meaning is generally sufficient for most license negotiations. Additionally, some publishers and content providers have found repeated negotiations with multiple libraries on the same points to be less than efficient use of their time. They are becoming more comfortable with libraries' commitment to and ability to protect intellectual property. One promising development is SERU: Shared Electronic Resource Understanding, a best practice of the U.S. National Information Standards Organization (NISO).

The NISO SERU website (www.niso.org/workrooms/seru) offers resources for libraries, consortia, and publishers to reduce the use of licensing agreements and the amount of time negotiating licenses. SERU was originally designed to replace licenses for e-journals and has been expanded to accommodate journal backfiles and e-books. Under SERU, no license is required

because U.S. copyright law governs use. SERU is not legally binding but instead is a collection of statements to which the licensor and the licensee agree. To implement SERU, an organization must sign up to be added to the SERU registry (available on the SERU website), which lists publishers and content providers, libraries, and consortia that are interested in applying SERU to some products.

Even when a license is required, libraries following the best practice presented here should be able to navigate through the licensing process effectively. Libraries should begin by developing their own guidelines for acceptable licenses. These will serve as an internal guide or checklist for the library to follow when reviewing and negotiating a license and ensure a consistent approach to negotiating all licenses. The guidelines should identify any mandated clauses, clauses that the library is prohibited from accepting, and clauses that are preferred but not mandatory. Points raised in each of the key elements presented in the previous section can inform the guidelines. A few that merit special attention are

- definition of authorized users
- library rights to use the content for ILL, distance education, and course reserves
- user rights to print, download, e-mail, or copy and paste content
- notification of modification to services and content
- rights to perpetual access
- confidentiality of users
- applicable governing law
- provision of use statistics
- indemnification
- renewal and termination processes
- preferred payment scheme and awareness of what the library is prepared to pay

Libraries should make decisions on these points and set acceptable baselines that are consistent with their mission and with the legal environment in which they operate.

Other points that might appear on a checklist address the library's ability to meet license obligations as well as conditions associated with accessing the content. Can the library authenticate authorized users as required? Can the library commit to taking the appropriate and reasonable measures to ensure

that the content is not misused? Is the library able to provide additional hardware and software if it is needed? Is content accessible from the handheld devices most users own? Reviewing these points with the proposed license in hand is essential to protect the library and to make certain patrons can access the content.

Implicit in the development and use of a checklist is the provision of a written license against which the checklist is compared. Libraries should insist on a written license and review it attentively. The license binds the licensor in writing just as it binds the licensee—the library.

Determining who should negotiate on behalf of the library and request amendments to the license is vital. This responsibility is usually limited to a single individual. This person might be someone in the library (e.g., collections development librarian or officer, librarian working in acquisitions, electronic resources librarian, digital library manager, library director) or someone from the office of legal counsel or purchasing unit of the parent organization. Negotiation might take place at the consortial level by someone empowered to act on behalf of the consortium and thus its members. Often, if an attorney is not involved in the negotiations, the library may refer the final license to the library's attorney or that of its parent organization for final wording and approval. The individual designated for license negotiations should be authorized to reject offers and terminate the license negotiation if mutually acceptable agreement cannot be reached.

The individual who negotiates on behalf of the library may not be the person who is authorized to sign the license. The individual who signs the contract must have the authority to bind the library to, approve, or execute a contract on the library's behalf. Many libraries operate under clear delegations and subdelegations of authority. In some, only the library director has the delegated authority to bind the library to a legally enforceable obligation. He or she may have subdelegated the authority to someone else in the library. In other libraries, this authority to sign licenses may be reserved to an individual at an upper level in the parent organization.

Once a license is signed by the participating parties, the library needs a process in place to manage it. This means a mechanism to track the terms and conditions, product costs, and renewal process. Maintaining paper files quickly becomes onerous. Libraries may develop an in-house ERM database to track their licenses or may purchase a commercial ERM product often linked to an ILS. ERM systems facilitate managing the life cycle of license agreements. Data entered and tracked usually include the licensor, name of

the product, effective date of the license, expiration date, and terms of use rights and restrictions in the license. Some libraries use the ERM to hyperlink to a scanned image of the license stored digitally on a server. Some libraries create separate online files that track, by product, rights to use (or not) its content for ILL, course reserves, and distance education.

SHORTLIST OF BEST LICENSING PRACTICES

- Have a checklist of your library's requirements and compare all clauses in a license to these requirements.
- Require a written license.
- Read the license carefully and understand all aspects.
- Pay particular attention to access and use rights.
- Know what you can pay.
- Determine who can negotiate on behalf of the library.
- Be prepared to negotiate and to walk away if agreement cannot be reached.
- Ensure that the individual signing the license has legal authority to do so.
- When you have questions or if required by local practice, consult the legal counsel for your library.
- Retain and manage licenses after signature.

SUMMARY

Licenses for e-content are matters of contract law and take priority over copyright law. They are legally binding agreements enforceable by law. Licenses have consequences if the obligations specified in them are not met. Understanding what is prohibited and permitted in a license is essential. Two areas of particular concern to libraries are the definition of authorized users and of the rights granted to the library and its users. These rights spell out what is and what is not permitted. Equally important are obligations placed on both the licensor and the library.

Many licenses address the same issues in similar clauses and with similar vocabulary. Understanding these issues, clauses, and legal terms facilitates successfully negotiating and finalizing a license that is acceptable to both the licensor and the library. Developing a set of guidelines or a checklist of areas to monitor is valuable. The guidelines identify any mandated clauses that

must be present, any that the library is prohibited from accepting, and any that are preferred but not mandatory. Libraries are advised to track licenses through their life cycle because of their legally binding nature and the consequences of failing to meet obligations.

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CHAPTER 5

CONDUCTING BUSINESS WITH E-CONTENT AND SERVICE SUPPLIERS

ALL LIBRARIES WORK with content suppliers—publishers, aggregators, vendors, subscription agents, or an entity that provides a combination of the products and services normally associated with one of these suppliers. Some libraries work with many types of content suppliers and with multiple companies in each of these categories. Other libraries work with a more limited number of suppliers. The librarian's responsibility is to obtain the best deal possible—one that results in cost-effective services and e-content that meet users' need and satisfy the library's goals. An important element in obtaining this aim is building and maintaining effective relationships. This chapter explores aspects of library relations with e-content and service suppliers: researching suppliers and service providers, negotiating successfully, and communicating effectively throughout the course of their relationship.

RESEARCHING SUPPLIERS AND SERVICE PROVIDERS

A relationship with a content or service supplier begins with researching possibilities and options. The first question to be answered is whether the supplier offers the e-content and services in which the library is interested. The next question is whether the supplier's business model meets the library's needs. To find answers, librarians collect information on products, prices, and services that have been determined of interest.

Informal Sources of Information

Librarians can obtain information about the products and services offered by publishers, vendors, agents, and aggregators in various ways. A good place to begin is at their websites, which also may give a hint to the functionality