

# Procurement Toolkit and Code of Best Practices for Licensing Electronic Resources



American Association of  
Law Libraries

**AALL Procurement Toolkit and Code of Best Practices for Licensing Electronic Resources**

*Approved by the Executive Board in April 2013.*

©2013 by the American Association of Law Libraries. All rights reserved.

## PROCUREMENT TOOLKIT AND CODE OF BEST PRACTICES FOR LICENSING ELECTRONIC RESOURCES

### Introduction

In 1997, the American Association of Law Libraries (AALL) joined with five other library associations to draft principles for licensing electronic resources. These principles had the dual purpose of guiding libraries in their negotiations for access to electronic resources and informing vendors and publishers of digital information about the licensing issues important in the library context.

In 2004, the Principles were revised by an AALL Special Committee appointed by President Carol Avery Nicholson in 2002. The revised Principles reflected both the rapidly shifting landscape of digital information and evolving user needs as a result of enhanced technologies.

In 2011, AALL President Darcy Kirk appointed a Library Procurement Process Improvements Task Force. This Task Force was directed, in part, to “Update the *Principles for Licensing Electronic Resources*, paying particular attention to new developments in vendor licensing practices and to providing model language for basic licensing provisions.”

In the 15 years between the initial drafting of the Principles and this revised and renamed version, the process of licensing electronic resources has become more uniform. Model license agreements and sample clauses developed by a handful of library consortia, most notably the California Digital Library (CDL) and the Northeast Research Libraries (NERL), have gained widespread acceptance and adoption by libraries and information vendors alike. Where once there was little commonality from one vendor’s license agreement to the next, today many are strikingly similar. However, licensing electronic resources for libraries remains a complex and legalistic process.

This Code of Best Practices provides guidance to both librarians and vendors engaged in the licensing process. In addition to the revised principles, the Library Procurement Process Improvements Task Force has developed the following materials, which are appended here:

- Appendix A - CHECKLIST FOR LICENSING ELECTRONIC RESOURCES
- Appendix B -RESOURCES FOR LICENSING TERMS AND DEFINITIONS
- Appendix C - RESOURCES FOR SAMPLE CLAUSES AND MODEL LICENSE AGREEMENTS
- Appendix D - BIBLIOGRAPHY - LICENSING AND PROCUREMENT OF ELECTRONIC RESOURCES
- Appendix E - PROCUREMENT PROCESS CHECKLIST FOR LAW LIBRARIES

Taken together, the Task Force recommends this collection as a toolkit for anyone involved in library procurement.

## Legal Background

A license is an agreement *negotiated* by the parties involved. Once the parties have agreed to terms, the license is a legal and binding contract between them. A contract is "[A]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." [Black's Law Dictionary, 7th edition, 1999.]

License agreements regulating the use of electronic resources govern the relationship between the licensee (the library or user of the content) and the licensor (publisher, vendor or aggregator of the content). In a typical situation, the licensor will present their standard license agreement to the licensee. This is just the first step in the license negotiation process. Because both parties will be bound by the terms therein, *each party* should review the license carefully and *be prepared to negotiate* in good faith to reach a satisfactory agreement. If the parties cannot agree on key issues in writing, the license should not be signed. The terms of the final agreement should be committed to writing and neither party should rely on verbal agreements or commitments.

In the area of licensing electronic resources, failure on the part of the licensee to read and understand the terms of the agreement may result in such unintended consequences as:

- the loss of certain rights to uses of the resource that would otherwise be allowed under the law (for example, in the United States, such uses as fair use, interlibrary loan, and other library and educational uses);
- obligations to implement restrictions that are unduly burdensome or create legal risk for the institution;
- sudden termination of the contract due to inappropriate use by a member of the user community;
- unexpected cancellation or renewal notification requirements or automatic renewals and fee increases;
- access restrictions that cannot be supported by your technical or administrative infrastructure

Given the obligations that a contract creates for an institution and the possible liability associated with not meeting those obligations, most institutions will delegate the authority to sign contracts to a specific office or officer within the institution. In many institutions, this signatory authority will reside in the purchasing department, legal counsel's or vice president's office, or the library director's office. In some institutions, a library staff member may be granted authority for signing license agreements. Library staff will often be responsible for initial review and negotiation of the material terms of the license because they have the most knowledge of the user community and of the resource being acquired. Library staff involved in license negotiations should be well informed of the anticipated uses that are essential to their library's user community (for example, interlibrary loan, downloading, or data mining).

The following Code of Best Practices, along with the appended toolkit materials, are meant to provide guidance to library staff working with others in their own institution and with third-party licensors to reach agreements that respect the rights and obligations of both parties. Library staff engaged in the procurement process should also be familiar with the [\*AALL Guide to Fair Business Practices for Legal Publishers\*](#), the [Committee on Relations with Information Vendors \(CRIV\) tools](#), and the [AALL Price Index for Legal Publications](#). All of these publications are available at [AALLNET.org](http://AALLNET.org).

## **CODE OF BEST PRACTICES FOR LICENSING ELECTRONIC RESOURCES**

### **Code Section I – Licensing Preparedness**

**Description:** Academic, law firm and government libraries are all involved in licensing electronic resources. It is the expectation of all parties to a license agreement that negotiations throughout the process will be conducted openly and in good faith.

**Practice #1:** If negotiation, licensing and procurement for your library are carried out by a department outside of the library, be sure there is clear communication between the departments so that the library's needs are understood and well-represented.

**Practice #2:** A license is a contractual agreement between the licensor and the licensee for purchase or use of an information resource by the licensee's authorized users. Parties to a license agreement should be familiar with the elements of a legal contract.

**Practice #3:** All parties should accomplish the practice of licensing electronic resources in good faith. It is important that the process be carried out as openly as possible to achieve fairness and to develop best practices. A confidentiality or nondisclosure agreement should not be a prerequisite to a license agreement.

**Practice #4:** It is expected that vendors will be open and transparent in their pricing structure, and will provide accurate and relevant pricing information for inclusion in the [AALL Price Index for Legal Publications](#).

### **Section Comments:**

- a) A non-disclosure agreement is a contract provision that requires the licensee and/or licensor to refrain from making public certain information, such as terms, price, and access restrictions.
- b) Law firm libraries may require a confidentiality or nondisclosure clause intended to protect their clients' privacy. This is not the type of nondisclosure anticipated by Practice #3 above.
- c) Academic and State, Court and County law libraries may be subject to external disclosure requirements, imposed by state or federal government, and thereby prohibited from entering into non-disclosure agreements.

### **Code Section II – License Components**

**Description:** From the vendor's business perspective, licensing content is the distribution of the vendor's intellectual property to a 3<sup>rd</sup> party. The distribution of the content is in exchange for a fee. Legally, licensing content requires that the licensor and the licensee agree by contract to each party's rights and obligations, including authorized users, permitted uses, terms of usage, length of access rights, and other terms governing the use of the vendor's content.

A written license agreement, signed by both parties, should represent any and all negotiated terms and conditions. An agreement that references terms and conditions contained in

additional documentation, such as terms posted on a website, is discouraged. This practice, known as incorporation by reference, can result in compliance problems for all parties and for authorized users.

Any changes to the terms of a license agreement require written notice and subsequent formal agreement of both parties. The agreement should stipulate how much notice is required and how agreement of the parties will be registered (e-mail, mail, etc.).

**Practice #1:** A license agreement should be written in clear, non-technical language. Terms that could be ambiguous or subject to interpretation should be defined within the agreement to reflect the parties' intent.

**Practice #2:** Any amendment or change to the terms of an agreement requires written notice and formal agreement between the parties.

**Practice #3:** A license agreement should clearly and unambiguously identify the particular content that is the subject of the agreement.

**Practice #4:** A license agreement or appended pricing document should clearly and unambiguously state all costs and fees associated with the acquisition of the content.

**Practice #5:** A license agreement should state clearly whether the access rights being acquired by the licensee are for permanent use and ownership of the content or are subscription-based access rights only.

**Practice #6:** A license agreement should state clearly the period of time for which access rights are being acquired.

Practice Comments:

- a) Short-term license agreements should be considered as a strategy to meet research needs while managing limited fiscal resources.
- b) A short-term license agreement could also allow a library to evaluate demand for a product before committing to a long-term contract.
- c) A multi-year license agreement should reflect a greater discount or fixed pricing in consideration for the longer term commitment.

**Practice #7:** Incorporation by reference is discouraged. A license agreement should not reference terms and conditions outside of the written agreement, such as terms posted on a website. If any such terms must be referenced in the license agreement but are not included in their entirety within the four corners of the contract, they should be carefully reviewed. Make sure the document being referenced does not contain conflicting terms.

**Practice #8:** Neither party should rely on verbal assurances or understandings. A license agreement, along with any appendices, addendums or attachments, should comprise the whole

of the agreement between the parties. All agreed terms should be incorporated into the written agreement.

**Practice #9:** A license agreement should not require the licensee to adhere to unspecified terms in a separate agreement between the licensor and a 3<sup>rd</sup> party, such as a publisher or other copyright holder, unless the terms are fully reiterated in the current license or fully disclosed and agreed to by the licensee.

**Practice #10:** The terms of the license should be considered fixed at the time the license is signed by both parties. If the terms are subject to change (e.g. scope of coverage, method of access), the agreement should require the licensor or licensee to notify the other party in writing in a timely and reasonable fashion of any such changes before they are implemented, and permit either party to terminate the agreement if the changes are not acceptable.

Practice Comment:

- a) Appropriate notification by the licensor to the licensee is necessary for any material changes in content, expiration or cancellation of the contract, changes to price, or any other modification for which the library requires notification. The agreement should state both the amount of notice required (30 days, 60 days, etc.) and the method of notice that is acceptable to the parties (written, e-mail, etc.).

**Practice #11:** Bundling is a marketing strategy that allows the vendor to offer several products and or formats for sale as one combined product. A license agreement should state the financial relationship, if any, between the electronic resources being licensed and any equivalent publications in other formats.

### **Code Section III - Authorized Use and Authorized Users**

**Description:** The library licenses access to electronic resources on behalf of end-users. When negotiating licensing agreements, the licensee should have a complete understanding of who will use the resource and how the end-users expect to use the licensed materials. The license terms should reflect any and all anticipated uses, and clearly state any limitations on use of the licensed content. Limitations on use imposed by the licensor should be reasonable and not impede the end user's ability to fully utilize the licensed materials.

**Practice #1:** The license agreement should clearly identify all classes of anticipated authorized users.

Practice Comment:

- a) Possible authorized users include students, visiting scholars, faculty (full-time, part-time, adjuncts), staff, alumni, members of the bench and bar, clients, members of the public, interns, summer associates, named attorneys, attorneys assigned to a particular practice group.

**Practice #2:** The contracting parties to an agreement should be clearly identified in the agreement as licensee and licensor. Authorized users may or may not be parties to the agreement, depending on the type of library.

Practice Comments:

- a) In an academic or public law library, a license agreement should not require authorized users to enter into independent agreements with licensor through the use of click-through agreements.
- b) An agreement should identify the manner in which authorized users will be notified of the license terms.

**Practice #3:** The licensee should be willing to undertake reasonable and appropriate methods to notify authorized users and to enforce the terms of access to a licensed resource. Enforcement of the terms of a license agreement must not violate the privacy and confidentiality of authorized users.

**Practice #4:** The licensee should be responsible for establishing policies under which authorized users make appropriate use of licensed resources.

**Practice #5:** A license agreement should not hold the licensee liable for unauthorized uses of the licensed resource by its users, as long as the licensee has implemented reasonable and appropriate methods to notify its user community of use restrictions.

**Practice #6:** A license agreement should require the licensor to give the licensee notice of any suspected or alleged license violations that come to the attention of the licensor and allow a reasonable time for the licensee to investigate and take corrective action, if appropriate.

**Practice #7:** A license agreement should clearly state the permitted uses of the electronic resource. Licensee should be sure the agreement reflects all anticipated uses, including but not limited to, printing, downloading, copying, mobile access, electronic reserves, scholarly sharing, interlibrary loan, inclusion in document management systems, and the development of course packs.

**Practice #8:** Licensors should agree that occasional and irregular use of limited portions of the licensed materials for inclusion in organization documents, communications to members of the organization or clients, or incorporation into government agency or court filings is permitted.

**Practice #9:** A license agreement should specify the means of authentication and access to the electronic content that are available to authorized users.

**Practice #10:** A license agreement should not require the use of an authentication system that creates an unnecessary barrier to access by authorized users.

**Practice #11:** A license agreement should recognize the affiliation of users with a given library or institution, regardless of users' physical location and should allow for routine remote access to licensed electronic information resources.

## **Section Comments:**

- a) It is desired that if a vendor provides mobile access:
  - I. Mobile users will have the same rights of access to content as non-mobile users;
  - II. Content will be compatible across platforms;
  - III. Where content is licensed for a specific number of seats/users, a single user accessing content on multiple platforms should be counted as one seat/user.

## **Code Section IV - Copyright and Intellectual Property**

**Description:** As information technology evolves, the laws governing intellectual property change to keep pace. Licensees must be aware of their organization's rights and obligations under current copyright law.

**Practice #1:** A license agreement should recognize and not restrict, abrogate or circumvent the rights of the licensee or its user community permitted under copyright law, including but not limited to the fair use provisions of Section 107 of the U.S Copyright Act (17 U.S.C 107) and the interlibrary loan provisions of Section 108 of the U.S. Copyright Act (17 U.S.C. 108).

**Practice #2:** A license agreement should support the practice of Interlibrary Loan (ILL) of digital resources. Using electronic, paper, or intermediated means, licensee may fulfill ILL requests from other institutions. Licensee agrees to fulfill such requests in compliance with Section 108 of the U. S. Copyright Act (17 USC 108).

**Practice #3:** A license agreement should not limit the rights of the licensee to use public domain content in any way, even when such content is included as part of the licensor's proprietary resource.

**Practice #4:** A license agreement should recognize the intellectual property rights of the licensee, the licensor and any relevant third-party.

**Practice #5:** A license agreement should 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, trade-mark, or trade secret of any third party.

## **Section Comments:**

- a) Law Firms that make filings at the US Patent and Trademark Office that contain copyrighted material should consult the [USPTO General Counsel's Memorandum](#) of January 19, 2012, "USPTO Position on Fair Use of Copies of NPL Made in Patent Examination," for guidance on the payment of copyright fees.

## **Code Section V – Archiving**

**Description:** Libraries provide both current and historical information for their users, and recognize a professional responsibility to preserve information for future generations. Digital information presents unique challenges for preservation. A license agreement should address the issues related to long-term storage and access of the licensed materials.

**Practice #1:** When permanent use of a resource has been licensed, licensor should provide a usable archival copy of the licensed content, including any necessary interface. The license should specify the delivery format of the archival copy, and the conditions under which the licensee may access or refer users to the archival copy.

**Practice #2:** When subscription-based or renewable use of a resource has been licensed, a license agreement should specify what, if any, access to the licensed material would continue to be available after the subscription period lapses.

**Practice #3:** A license agreement should authorize the Licensee to hold an archival copy of the licensed materials, to be maintained as a backup or archival copy during the entire term of the agreement. Such copy may be provided by the Licensor or created by the Licensee.

**Practice #4:** A license agreement should specify who has permanent archival responsibility for the licensed content.

#### **Section Comments:**

- a) Many factors can impact the uninterrupted delivery of electronic data. Systems can fail; vendors can fold, merge or get acquired; data can erode. For critical data a library should have archival rights.
- b) In intellectual property, product liability and other cases, access to content as it existed on key dates can have an economic value. In the same way that a patron would use a previous version of a book to establish liability of a current entity, archived versions of electronic content can be a critical part of fact finding.
- c) A third party may be designated to maintain a permanent archival copy.

#### **Code Section VI – Usage Tracking and User Privacy**

**Description:** Usage is an increasingly important metric in collection development decisions. Usage statistics can assist both parties in evaluating demand and negotiating acceptable terms. However, it is necessary to protect the privacy of users.

Aggregated usage data should not be linked to identifiable users. For licenses that cover multiple jurisdictions or patron types, laws and regulations of all jurisdictions need to be considered in developing an appropriate compliance procedure with applicable privacy laws.

**Practice #1:** A license agreement should describe the usage statistics collected or generated by the licensor or any third parties, and the means available for the licensee or their designee to access those statistics.

**Practice #2:** The routine collection of use data by either party to a license agreement should be predicated upon disclosure of such collection activities to the other party and must respect laws and institutional policies regarding confidentiality and privacy.

**Practice #3:** It is a tenet of librarianship to protect the confidentiality and privacy of the library user. User-specific usage information should not be collected or stored by the information provider.

**Section Comments:**

- a) Usage statistics aid both the licensee and licensor in maximizing the use of resources.
  - I. Low usage may suggest any of the following; demand for the content is low, resource is not easily discoverable, interface may not be user-friendly, marketing efforts of either licensee or licensor may need attention, additional training may be required.
  - II. High usage may suggest any of the following; excellent content, institutional preference or product popularity, false positives generated by federated search tools.
  - III. Usage statistics alone are insufficient to determine the value of a resource to a subscribing library. Statistics that seem either too high or too low require further investigation.
- b) Licensors should strive to provide usage statistics that are [COUNTER compliant](#). COUNTER is a standard in the industry.
- c) Law libraries may also track metrics through a third party resource like Research Monitor, Look Precision or One Log. This does not relieve the licensor of the obligation to provide usage statistics.
- d) A benefit to all parties for aggregated usage data is that law libraries and vendors can partner together to make the best use of resources. Training for resources can be adapted based on usage data. Better use of resources increases the probability of renewing later contracts.

**Code Section VII –Termination/Renewal**

**Description:** A license agreement will carry a specific expiration date. In the event that all parties carry out their rights and obligations accordingly, the license will terminate on that date. The parties are then free to renegotiate. An agreement might also contain an automatic renewal clause. This sets forth the terms under which the original agreement will remain in place after the initial term expires, without further negotiation. An agreement should also anticipate other circumstances under which termination of the agreement could occur, including a breach by either party.

**Practice #1** - A license agreement should clearly state the terms and conditions for renewal and termination.

**Practice #2** - A license agreement should provide termination/renewal rights that are acceptable to each party.

**Practice #3** – A license agreement should clearly identify the acts which constitute a breach, and the remedies available to the parties to correct such breach.

**Practice #4** - A license agreement should specify the financial obligations of both parties in the event that either party terminates the license.

**Practice #5** - Automatic renewal should not be assumed in the absence of specific licensing language.

**Section Comments:**

- a) The parties should consider including an escape clause provision. An escape clause may be needed in the event that significant changes occur within an organization, such as a material change in budget, revenues/appropriations, headcount/FTE, mission shift or merger of either party. The agreement should clearly define what constitutes a 'material change.'
- b) Automatic renewals – Automatic renewals are not per se undesirable. They may create efficiencies and streamline some work processes. However, the agreement should clearly define the terms for the parties to invoke or reject an automatic renewal.

**Code Section VIII –Dispute Resolution**

**Description:** Parties to a license agreement who have a conflict resulting from their agreement may wish to choose alternative dispute resolution before litigation.

**Practice #1:** A license agreement should allow for the use of alternative dispute resolution to resolve any conflicts that may arise in relationship to the agreement.

**Practice #2:** A license agreement should stipulate the rights and obligations of the parties in the event of a dispute.

**Practice #3:** A license agreement should state the choice of law and choice of venue by which the parties will be governed in the event of a dispute.

**Section Comments:**

- a) The agreement should specify how an arbitrator or referee will be selected and the party responsible for fees.
- b) If the parties are not able to agree on choice of law and/or choice of venue, one strategy is for the agreement to remain silent on these issues. In the event of a dispute these issues would be resolved in the course of litigation.

**Code Section IX – Warranties/Quality of Service**

**Description:** A warranty provides assurance that a fact upon which a party relies is true, so that the relying party does not have to discover that fact for himself. A party that grants a warranty effectively indemnifies the other party from harm or loss if the warranty is not honored. A license agreement might also contain warranty disclaimers or limitations.

**Practice #1:** A license agreement should state the warranties extended by the licensor to the licensee with respect to the licensed content.

**Practice #2:** A license agreement should state the limitations on warranties between the licensee and licensor.

**Practice #3:** A license agreement should state the terms of compensation between licensee and licensor in the event that the warranty is not met or the quality of service falls below reasonable standards.

**Appendix A**  
**CHECKLIST FOR LICENSING ELECTRONIC RESOURCES**

**Licensing Preparedness**

- The library has identified the individual(s) with the authority to negotiate/review the license agreement.
- The library has identified/defined all authorized users for the resource.
- The library has defined the required or acceptable uses for the resource.
- The library had defined their non-negotiable requirements in the contract (e.g. non-disclosure agreement, state/federal law requirements, etc.)

**License Components**

- The license is written in clear, non-technical language. If not, consider requesting a revised license.
- The license clearly identifies the content that is the subject of the agreement.
- Parts of the license that have been deemed by the licensee as non-negotiable have been identified.
- Any external documents or terms referenced within the license agreement have been clearly identified and made available to the licensee.
- The license clearly states access rights of the licensee as either permanent ownership or subscription-based rights.
- The license clearly states the time period for access rights.
- The license allows for an appropriate length of time for notification by the vendor of any changes to content, price, the expiration of the contract, etc.
- The license clearly states that licensor shall communicate any changes to the terms and conditions in writing, and that any such changes are subject to acceptance by the licensee. Use of a resource does not constitute acceptance of any revised terms.

**Authorized Use and Authorized Users**

- The license agreement identifies all classes/types of authorized users.

- The license reflects that authorized users are governed by the terms of the license, but are **not** parties to the agreement.
- The terms of the license does not violate the privacy and confidentiality of authorized users.
- The license clearly states policies under which authorized users can make appropriate use of licensed resources.
- The license does not hold the licensee liable for unauthorized use of the licensed resource by its users as long as the licensee acts in good faith to uphold the terms of the license.
- The license requires the licensor to give the licensee notice of any alleged license violation, and reasonable time for investigation and to correct the violation.
- The license clearly states the permitted uses of the licensed resource.
- The license specifies the means of authentication and access to the licensed content.
- The license allows for remote access to licensed content by the affiliation of users within a library or institution.

### **Copyright and Intellectual Property**

- The license agreement recognizes and does not restrict, abrogate or circumvent the rights of the licensee or its authorized users permitted under copyright law, including but not limited to the fair use provisions of Section 107 of the U.S. Copyright ( 17 U.S.C 107) and the interlibrary loan provisions of Section 108 of the U.S. Copyright Act (17 U.S.C. 108).
- The license supports the practice of Interlibrary Loan (ILL) of the licensed content.
- The license does not limit the use of public domain content.
- The license recognizes the intellectual property rights of the licensee, the licensor, and any relevant third-party.
- The license requires the licensor to defend, indemnify, and hold the licensee harmless from any action based on a claim that the use of the licensed content any way infringes any patent, copyright, trade-mark, or trade secret of a third party.

## Archiving

- Permanent use of a licensed resource:
  - The license requires the licensor to provide a usable archival copy of the licensed content.
  - The license specifies the delivery format of the archival copy of licensed content.
- Subscription-based or renewal use of a licensed resource:
  - The license specifies what licensed content will continue to be available after the subscription period ends.
- The license authorizes the licensee to hold an archival copy of the licensed content as a backup during the length of the agreement.
- The license specifies who has permanent archival responsibility for the licensed content.

## Usage Tracking and User Privacy

- The license clearly defines what usage statistics are needed and in what format by the licensee.
- The license specifies the type of statistics collected, how often statistics are collected, and how they are accessible by the licensee.

## Termination/Renewal

- The license clearly states the terms and conditions for renewal and termination.
- The license clearly identifies the acts which constitute a breach of contract, and the remedies available to all parties.
- The license clearly states whether the license will be automatically renewed unless the licensor has been notified with a specified number of days prior to the end of the agreement.

## Dispute Resolution

- The license allows for the use of alternative dispute resolution to resolve any conflicts.

- The license clearly states the rights and obligations of all parties with respect to dispute resolution.
- The license states the choice of law and choice of venue, by which all parties will be governed, or remains silent and is resolved in the course of litigation.

**Warranties/Quality of Service**

- The limitations on warranties extended in the license are acceptable to the licensor.
- The terms of compensation offered in the license in the event that the licensed material is unavailable are acceptable to the licensor.
- Institutional requirements of all warranty provisions or disclaimers are included in the license.

**Appendix B**  
**RESOURCES FOR LICENSING TERMS AND DEFINITIONS**

- **Association of Research Libraries (ARL®)**
  - <http://www.arl.org/sc/marketplace/license/glossary~print.shtml>
  
- **Serials Acquisitions Glossary, ALA Association for Library Collections & Technical Services**
  - [http://www.ala.org/alcts/sites/ala.org.alcts/files/content/resources/collect/serials/acgglossary/05seracq\\_glo.pdf](http://www.ala.org/alcts/sites/ala.org.alcts/files/content/resources/collect/serials/acgglossary/05seracq_glo.pdf)
  
- **LIBLICENSE Licensing Vocabulary (hosted by the Center for Research Libraries)**
  - <http://liblicense.crl.edu/resources/licensing-vocabulary/>
  - <http://liblicense.crl.edu/resources/licensing-terms-descriptions/> (descriptions of terms and sample clauses)

**Appendix C**  
**RESOURCES FOR SAMPLE CLAUSES AND MODEL LICENSE AGREEMENTS**

- **LIBLICENSE**, project launched in 1997 and currently hosted by Center for Research Libraries, offers licensing terms and descriptions with [sample language](#), and a [good glossary of licensing terms](#).
- The **California Digital Library (CDL)** maintains a comprehensive [database of agreements](#) to which they are or have been a party. Any confidential content has been redacted. This is a great source of sample language, definitions and clauses for librarians involved in licensing. The agreements cover hundreds of different resources from a wide range of providers. The agreements range from a single page to more than 30 pages.
- **John Cox Associates Ltd** maintains a set of public domain model licenses with commentary at [LicensingModels.org](#). The site includes 6 unique agreements by institution type:
  - [Single Academic Institution License - Single Academic Institution License Commentary](#)
  - [Academic Consortia License -Academic Consortia License Commentary](#)
  - [Public Libraries License -Public Libraries License Commentary](#)
  - [Corporate and other Special Libraries License - Corporate and other Special Libraries License Commentary](#)
  - [E-book \(and journal archive purchase\) License - E-book \(and journal archive purchase\) License Commentary](#)
  - [30/60 day free trial License](#)
- In the U.K., the **Joint Information Systems Committee (JISC)** provides [an Intellectual Property Rights Toolkit](#) which includes sample clauses and agreements.
- The **Committee on Interinstitutional Cooperation (CIC)** [standard agreement](#).
- The **National Information Standards Organization (NISO)** [Shared Electronic Resource Understanding](#) (SERU).

## Appendix D

### BIBLIOGRAPHY - LICENSING AND PROCUREMENT OF ELECTRONIC RESOURCES

Compiled by Janis Fusaris (University of Connecticut)

#### Articles

- Alford, Duncan E., "Negotiating and Analyzing Electronic License Agreements." *Law Library Journal*, v.94, no. 4, p. 621-644 (2002).
- Crawford, Amy R., "Licensing and Negotiations for Electronic Content." *Resource Sharing and Information Networks*, v. 19, no. 1-2, p. 15-38 (2008).
- Dames, K.M., "Getting to Yes: Licensing, Control, and the SERU Initiative." *Information Standards Quarterly*, v. 20, no. 1, p. 15-16 (2008).
- Delquie, Emilie and Cory Tucker, "Moving Forward with Electronic Content Procurement." *Against the Grain*, v. 23, no. 5, p. 22-28 (2011).
- Hamaker, Charles, "What's New in Licensing Electronic Resources for Libraries?" *Searcher*, v. 19, no. 5, p. 32-36 (2011).
- Lamoureux, S. et al, "Basics of E-Resource Licensing." *Serials Librarian*, v. 58, p. 20-31 (2010).
- Landesman, Betty et al, "Licensing Electronic Journals through Non-Subscription Agent Go-Betweens." *Serials Librarian*, v. 60, no. 1-4, p. 198-202 (2011).
- Mattson, Ingrid and Linda-Jean Schneider, "Negotiating and Complying with Electronic Database License Agreements." *AALL Spectrum*, v. 17, no. 4, p. 9-12 (Feb. 2013).
- McElfresh, Laura Kane, "Licensing Electronic Content." *Technicalities*, v. 27, no. 4, p. 1-14 (2007).
- Miller, Rachel, "Act of Vision: The Practice of Licensing." *Collection Management*, v. 32, no. 1, p. 173-190 (2007).
- Rathmel, Angela, "Innovative Practices in Electronic Resources and Acquisition Management." *Against the Grain*, v. 23, no. 1, p. 61-2 (2010).
- Rolnik, Zachary et al, "Alternatives to Licensing of E-Resources." *The Serials Librarian*, v. 54, no. 3-4, p. 281-287 (2008).
- Shinya, Kato, "SERU: Shared E-Resources Understanding: Alternatives to E-Resources Licensing." *Journal of Information Processing & Management*, v. 52, no. 10, p. 743-752 (2009).
- Strauch, Bruce and Adam Chesler, "A Licensing Survival Guide for Librarians." *Journal of Electronic Resources in Medical Libraries*, v. 6, no. 2, pp. 123-137 (2009).
- Watson, Mark R., "Licensing Electronic Resources: Is a Lawyer in Your Future?" *Technicalities*, v. 28, no. 4, p. 1-13 (2008).

#### Books

- Albitz, Becky. *Licensing and Managing Electronic Resources*. Oxford: Chandos Publishing, 2008.
- Ashmore, Beth, Jill E. Grogg and Jeff Weddle. *The Librarian's Guide to Negotiation : Winning Strategies for the Digital Age*. Medford, NJ: Information Today, Inc., 2012.
- Bosch, Stephen, Patricia A. Promis and Chris Sugnet. *Guide to Licensing and Acquiring Electronic Information*. Lanham, MD: Scarecrow Press, 2005.

- Durrant, Fiona. *Negotiating Licences for Digital Resources*. London: Facet Publishing, 2006.
- Harris, Lesley Ellen. *Licensing Digital Content: A Practical Guide for Librarians*. 2<sup>nd</sup> ed. Chicago: American Library Association, 2<sup>nd</sup> ed. (2009).
- Lipinski, Tomas A. *The Librarian's Legal Companion for Licensing Information Resources and Services*. Chicago: Neal-Schuman, An imprint of the American Library Association, 2013.
- Rupp-Serrano, Karen, ed. *Licensing in Libraries : Practical and Ethical Aspects*. Binghamton, NY: Haworth Information Press, 2005.

## Websites

- Center for Research Libraries (CRL) – LIBLICENSE – Licensing Digital Content: A Resource for Librarians - <http://liblicense.crl.edu/>
- Deal or No Deal – Licensing and Acquiring Digital Resources (LLRX.com) - <http://www.llrx.com/columns/deal1.htm>
- Deal or No Deal – Licensing and Acquiring Digital Resources: License Negotiations (LLRX.com) - <http://www.llrx.com/columns/deal2.htm>
- Deal or No Deal – Licensing and Acquiring Digital Resources: License Negotiations Reprise (LLRX.com) - <http://www.llrx.com/columns/deal3.htm>
- Deal or No Deal – Licensing and Acquiring Digital Resources: Deal Breaking License Clauses (LLRX.com) - <http://www.llrx.com/columns/deal4.htm>
- International Coalition of Library Consortia (ICOLC) – Statement of Current Perspective and Preferred Practices for Selection and Purchase of Electronic Information Update No. 1: New Developments in E-Journal Licensing - <http://legacy.icolc.net/2001currentpractices.htm>
- International Federal of Library Associations and Institutions (IFLA) – Licensing Principles, 2001 - <http://www.ifla.org/publications/ifla-licensing-principles-2001>
- National Information Standards Organization (NISO) – SERU (Shared Electronic Resource Understanding) - <http://www.niso.org/workrooms/seru/>
- U.S. Copyright Office – Copyright Law of the United States – Subject Matter and Scope of Copyright - <http://www.copyright.gov/title17/92chap1.pdf>
- U.S. Patent and Trademark Office, Office of the General Counsel – USPTO Position on Fair Use of Copies of NPL Made in Patent Examination - [http://www.uspto.gov/about/offices/ogc/USPTOPositiononFairUse\\_of\\_CopiesofNPLMadeinPatentExamination.pdf](http://www.uspto.gov/about/offices/ogc/USPTOPositiononFairUse_of_CopiesofNPLMadeinPatentExamination.pdf)
- University of California – California Digital Library Licensing Guidelines - [http://www.cdlib.org/gateways/vendors/guidelines\\_licensing.html](http://www.cdlib.org/gateways/vendors/guidelines_licensing.html)

**Appendix E**  
**Procurement Process Checklist for Law Libraries**

- Identify an information need
- Investigate market and evaluate competing products
- Check with consortia
- Establish trial(s)
- Enter resource(s) into ERM process/workflow
- Market to potential users during trial period
- Make acquisition decision at close of trial(s)
- Consider whether resource lends itself to [Shared Electronic Resources Understanding \(SERU\)](#) alternative to licensing
- Negotiate license agreement (see *Checklist for Licensing Electronic Resources* and the *AALL Code of Best Practices for Licensing Electronic Resources*)
- Market and promote resource to users
- Monitor ongoing access and use
- Evaluate return on investment
- Renew or renegotiate terms