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Licensing for Data

*Heather A. Wiggins, Adjunct Professor, The Catholic University
of America*

TRANSPORTATION LIBRARIANS ROUNDTABLE: LICENSING

Heather Wiggins
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Overview & Objectives

- Introduction
- Main Course: Licensing Fun
- Questions



Licensing/Negotiations





“When libraries broaden acquisitions to include not just sales, but to also encompass licensing in their business models, the effect has far greater implications beyond acquisitions.”

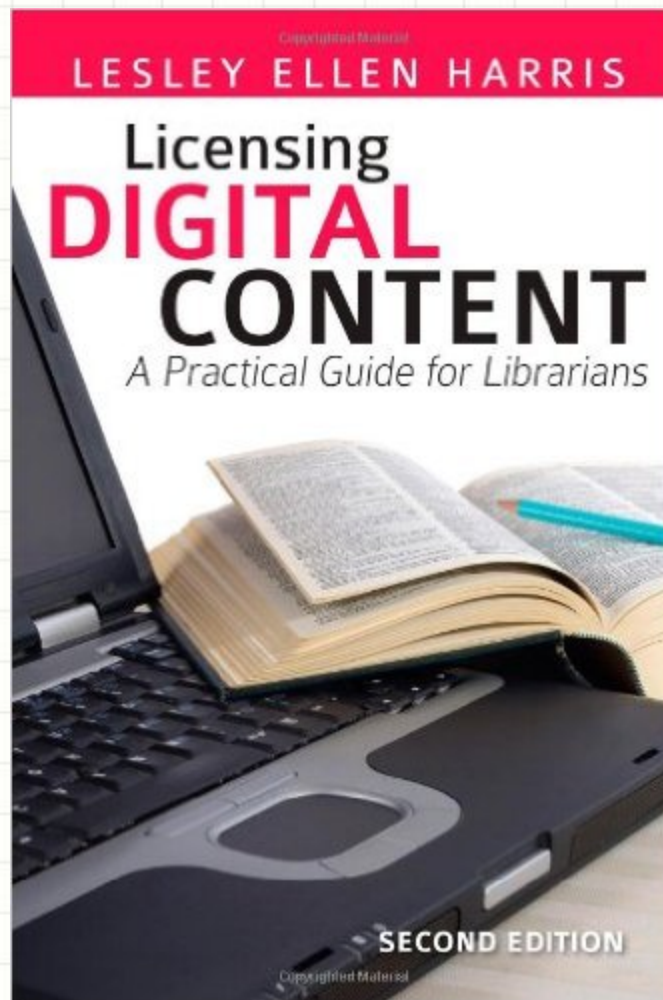
Tomas Lipinski, JD, LLM, PhD.

Professor, Library Science

Author: *The Librarian’s Legal Companion for Licensing Information Resources and Services*



Recommended Book Alert!



Harris's Quick Tips for Successful Agreements

- Avoid oral licenses
- Before reading any license agreement offered to you, write down on a blank piece of paper the “must haves.”
- Understand your obligations
- Cover all issues.
- Avoid legal language
- Use consistent words and terms.
- Each license agreement is unique
- Be creative, patient, and flexible
- Know when to walk away

Misconceptions About License Agreements

- 1) A license means permanent ownership
- 2) Lawyers always negotiate licenses
- 3) Renegotiating each year is a necessity
- 4) Librarians have no choice but to fight with content owners over licenses
- 5) Content owners all charge the same way
- 6) The term “user” is always defined by the content owner.
- 7) The library is responsible for its users
- 8) Licenses do not allow for protection of user privacy
- 9) Licenses and interlibrary loan are not related
- 10) Electronic journals are cheaper than paper ones
- 11) You have no control over the format of delivery or storage
- 12) Fair use or fair dealing do not apply to the electronic environment.

Data Management

- This section is included specifically because the basis of this roundtable is to discuss licensing as it pertains to Data Management.
- Especially as it correlates to data, this is an evolving area.
- Data is factual information and it is not copyrightable.
- What often ends up happening is that data ends up becoming collected, selected and arranged, and manipulated in such a way that the expression of the data receives a very thin layer of copyrightable protection in the form of a database.
- It is important to know before any sharing occurs: Who owns the intellectual property?

Data Sharing...

- Determining what data, databases, datasets etc, they want to share
- Determining if there are any intellectual property rights associated with the data
- Finding and determining what license would work best for their desired outcome. Ex. Creative Commons license?
- Are you going to allow use or reuse of the data? Will you want acknowledgment? Will you allow the use to be for commercial or non-commercial purposes?
- Apply license
- Make the data available to users in a format that is usable


When to License?

Licensing comes into play when you want to use electronic or digital content such as a database or periodicals or when someone wants to use the content owned by a library.

- (Consumer/Licensee): So you need a license agreement when you use other's contents. Ex. Accessing an online periodical.
- (Content Owner/Licensor): You require a license agreement whenever someone else uses your content. Ex. Licensing materials from your libraries for a developer.

What is a License Agreement

- A license agreement is a legally binding contract between two parties!
- A valid contract has three components:
 - 1) An offer to do something or refrain from doing something.
 - 2) Acceptance to the offer
 - 3) Consideration: Something that is of value in the eyes of the law.



Contract terms take precedence over existing rights and exceptions granted under Copyright Law.



“Nothing in this License shall in any way exclude, modify, or affect any of the authorized users’ statutory rights under national copyright.”

Clare Dygert
Assistant Director for Licensing and E-Resources
Florida Virtual Campus
NASIG 2015- Building Your Licensing and Negotiating
Skills Toolkit

Negotiable and Nonnegotiable Licenses

- License agreements may be negotiable or nonnegotiable.
- Negotiable is where the parties to the agreement discuss and agree upon what terms and conditions should be included in the agreement.
- Nonnegotiable is one in which the terms and conditions in the agreement are set forth by one party and must be accepted by the other party if it wants goods and services supplied.
- Most licenses that appear to be nonnegotiable are often negotiable. Always contact the content owner to ask about discussing terms and conditions.

Five Key Licensing Concerns

- 1. What is the ease of access to the works being sought? (online retrieval or download)
- 2. “One-stop” transactions where no additional permissions, payments, or clearances are required once the library has chosen and paid for the licensed content.
- 3. Clear definitions of what uses are permitted and what uses are not permitted and by whom and where
- 4. Access beyond the termination of the license agreement where necessary.
- 5. Liability or responsibility regarding the use of licensed content by employees, researchers, and the public.



Model Licenses

- There are no industry standards for licenses.
- There are model licenses out there, and while there are benefits to these, there are also cons. You have to decide what is best for your particular situation.
- They are also useful in developing a licensing policy.

Model Licensing Tools & Licensing Principles:

- **LibLicense:** <http://liblicense.crl.edu/licensing-information/model-license/>
- **Project Open Data:** <https://project-open-data.cio.gov/open-licenses/>
- **Open Data Commons:** <http://opendatacommons.org/licenses/odbl/>
- **Creative Commons:** <https://creativecommons.org/>
- **IFLA (International Federation of Library Associations and Institutions) Licensing Principles:** <http://www.ifla.org/elending/principles>
- **American Association of Law Libraries: Principles for Licensing Electronic Resources:** <http://www.aallnet.org/Archived/Advocacy/AALL-Recommended-Guidelines/licensing-electronic-resources-052013.html>
- **Copyright Clearing Center (Rights Licensing) :** <http://www.copyright.com/>

Three Steps to Negotiating a License

- 1) Develop a Licensing Needs Assessment (Determine your library and its patrons needs) *a) Product Related Issues b) User Related Issues c) Library Related Issues d) License Related Issues e) Administrative Issues*
- 2) What is being offered to you? (understand the needs of the electronic publisher or content owner) *Compare and contrast what is being offered to you.*
- 3) Your Negotiated License (Find a reasonable compromise between the needs of your library and the content owner). *There is no such thing as a “correct” agreement. The best is one in which both parties are satisfied. ~Harris.*

Know your users' needs

Be proactive to insert any relevant issues into the agreements



- **f. Education, Teaching and Research.**

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Center for Research Libraries, LibLicense Model License

<http://liblicense.crl.edu/licensing-information/model-license/>

Three Steps to Creating a Licensing Policy

- 1) Ask Questions
- 2) Review Existing Licenses
- 3) Review Models

Global Issues

- Determine what laws apply to your license agreement.
- Be aware of copyright issues in countries where the licensed content might be accessed.

Key Digital Licensing Clauses (Checklist)

- Preamble
- Parties to the Agreement
- Definitions
- Content Covered by the Agreement
- Rights Granted/License
- Sublicenses
- Interlibrary Loan
- Fair Use/Fair Dealing
- E-Rights
- Usage of Authorized Users
- Usage Restrictions
- License Fee/Payment
- Licensor Obligations
- Delivery and Continuing Access to the Licensed Content
- Support and Documentation

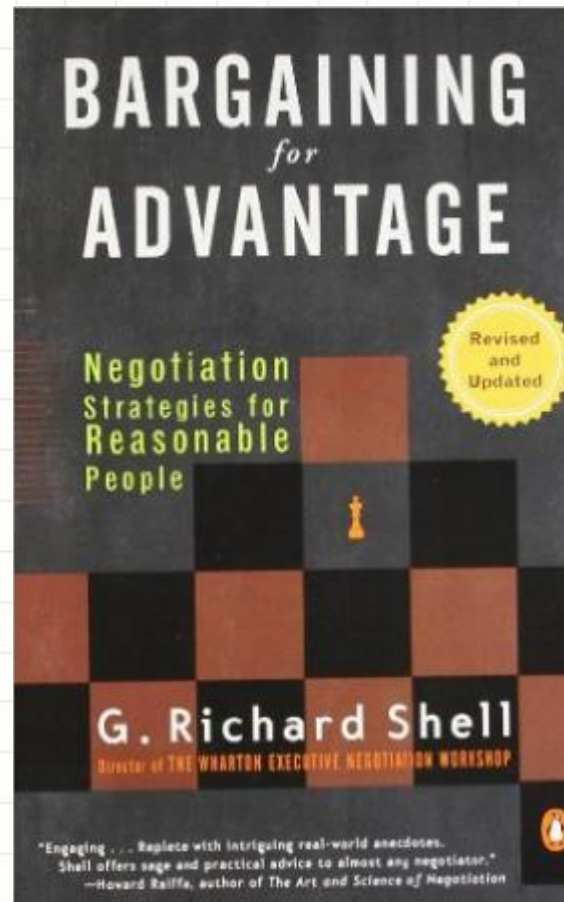
Cont'd

- Library/Licensee Obligations
- Monitoring Use
- Moral Rights
- Credits
- Territory
- Authorized Users
- Authorized Site
- Copyright Ownership
- Duration of Grant of Rights (Term of Agreements)
- Renewal
- Termination
- Archiving and Perpetual Access
- Disclaimers
- Warranties
- Indemnity and Limitations of Liability

Common Boilerplate Clauses

- Alternative Dispute Resolution
- Amendments
- Binding Effects
- Confidential Information
- Currency
- Entire Agreement
- Force Majeure
- Governing Law
- Independent Parties
- Interpretation
- Notice
- Remedies
- Severability
- Signature
- Survival
- Transferability of Assignment
- Waiver

Negotiating Tips



More on Negotiations Tips (Harris)

- Negotiation is not an “I win-you lose”
- Negotiate both negotiable and nonnegotiable licenses
- Never threaten the other party
- Avoid oral agreements
- Understand your patrons needs
- Be prepared by having all the information you need
- Know what you can give and how much you can spend
- If possible, one person from either side should be responsible for all negotiations
- Write down your goals.
- Plan your negotiations
- Know the party on the other side
- Listen carefully and actively
- Ask proactive questions
- Never assume anything at any point. Always get clarification of even the smallest details
- Be assertive—not aggressive.
- Communicate clearly and neutrally
- Take notes, check them frequently, and use them often.
- Stay focused and on track with your needs
- Watch body language
- Clear up any misconceptions promptly
- Know when to take a break
- Know when to walk away

Creative Commons

- Creativecommons.org (Video)
- <https://creativecommons.org/share-your-work/>
- Nonprofit organization that created a set of simple easy to understand copyright license
- 1) Allows creators to share work easily
- 2) Allows everyone else to find materials that are free to use without permission
- CC-BY (Probably the most common creative common licenses, allows someone to use the work if they put “By”

OPEN ACCESS: (misconception)

Is it true that Open Access means an article is not copyrighted?

No. Choosing to publish through an [open access channel](#) does not mean the article is not copyrighted.

The same options exist when publishing through an open access channel as when an article is published through a controlled-access (or traditional subscription) model: the author may in some cases be able to retain copyright, or may be required to grant the journal publisher copyright. But in either case, the article is still copyrighted, either by you or the publisher.

There is no direct and clean relationship between open access journals and copyright policy. Many, but not all, open access journals have liberal policies that allow authors to retain copyright. Most traditional subscription-based journals have standard copyright transfer agreements that require authors to turn over copyright upon publication, but some such publishers will agree to negotiate this requirement, or have a standard agreement that is more liberal.

Some publishers of [hybrid journals](#) allow authors to retain copyright for articles published under their open access option; others will still ask that you transfer copyright.

Even when self-publishing on the web, the author has copyright to the content.

([Registering copyright](#) is not required, although it has some advantages.) As an author and copyright holder, if you wish to clearly instruct readers about what you authorize them to do with your content, you can attach a [creative commons license](#).

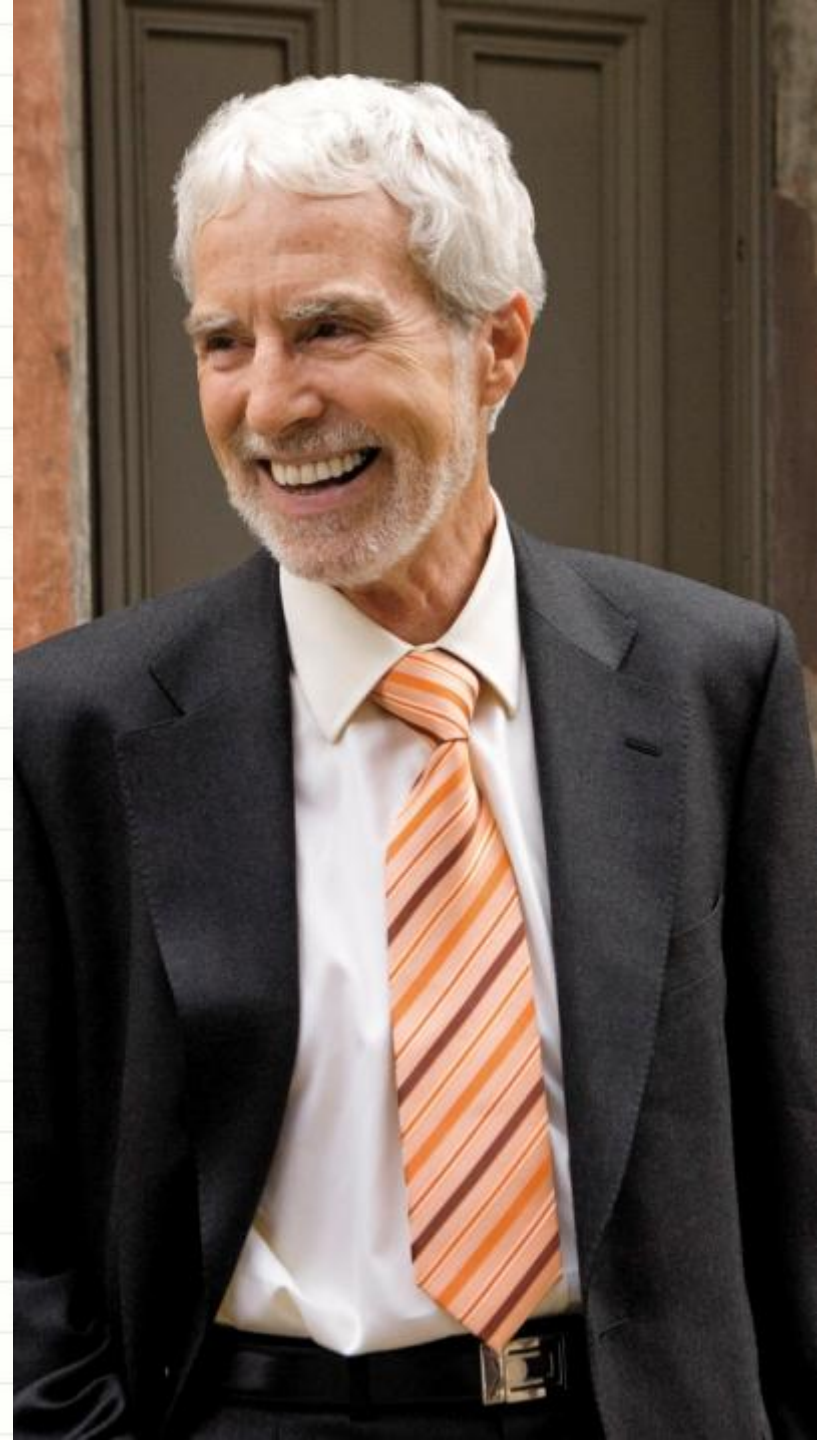
Additional Resource:

Digital Library Technologies: This is a video that comes out of the Library of Congress. (I am including this here so that if anyone wants to access it later, they can) A series of presentations from Library of Congress interns and staff on licensing.

<https://www.youtube.com/watch?v=FDaJg4Ea1bo>



Questions



THANK YOU! ☺



Upcoming TLRs

- September 8, 2016
TOPIC: Opportunities, Challenges, and Ethics of Social Media Archiving: The Case of the Documenting the Now Project (tentative title)
SPEAKER: Bergis Jules, University and Political Papers Archivist, University of California, Riverside
- October 13, 2016
TOPIC: New Projects and Products from NUTL (tentative topic)
SPEAKERS: Roberto Sarmiento and Rachel Cole, Northwestern University Transportation Library
- November 10, 2016
TOPIC: Introduction to the Research Data Alliance for the Transportation Community (tentative title)
SPEAKER: Lynn Yarmey, Research Data Alliance
- November 17, 2016
TOPIC: TLR Data Management Series: What Have We Learned So Far and Where To Next?
MODERATOR: Leighton Christiansen, Data Curator, National Transportation Library