Licensing Digital Content
A Practical Guide for Librarians
SECOND EDITION
Licensing
DIGITAL
CONTENT
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“Very useful for academic and public librarians or information professionals . . . well written and insightful.”

—Portal
Licensing Digital Content
A Practical Guide for Librarians
Second Edition

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American Library Association
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Lesley Ellen Harris is a copyright, licensing, and digital property lawyer who consults on legal, business, policy, and strategic issues in the publishing, entertainment, Internet, and information industries. Since 1991 her practice has served a broad range of clients, and she frequently works with libraries, archives, museums, and educational institutions. She often speaks at conferences, and teaches in-person and online courses on copyright and licensing through Copyrightlaws.com and in conjunction with national and regional associations in Canada and the United States. Harris began her career in copyright in 1984 working with a lobbying group interested in revising Canada’s copyright laws. From 1987 to 1991 she was senior copyright officer with the Canadian government, in which capacity she helped revise the country’s copyright laws. Harris is the author of the books Digital Property: Currency of the 21st Century (1997), Canadian Copyright Law (3rd ed., 2001), Licensing Digital Content: A Practical Guide for Librarians (1st ed., 2002), and numerous articles. Since 1997 she has been the editor of The Copyright and New Media Law Newsletter. She maintains the website Copyrightlaws.com and the blog Copyright Answers (www.copyrightanswers.blogspot.com). Harris may be reached at contact@copyrightlaws.com.

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CONTENTS

Acknowledgments ix
Introduction xi
Note to Canadian and Other Non-U.S. Readers xv
Quick- Starter Tips for a Successful Agreement xvii

1 • When to License 1
2 • Demystifying the Licensing Experience 17
3 • Learning the Lingo 35
4 • Key Digital Licensing Clauses 45
5 • Boilerplate Clauses 83
6 • Un-intimidating Negotiations 93
7 • Questions and Answers on Licensing 105
8 • Go License! 119

APPENDIXES
A • Section 107 of the U.S. Copyright Act on Fair Use 129
B • Section 108 of the U.S. Copyright Act on Interlibrary Loan 131
C • Digital Licensing Clauses Checklist 137

Glossary 139
Online Resources 151
Index 153
INTRODUCTION

Do I need a written agreement when licensing digital content?
Who is authorized to use the content my library licenses?
What if the license offered to our library is nonnegotiable?
Is electronic archiving allowed under our license?

These are a sampling of the many questions that have arisen over the past decade in the seminars I have been leading on digital licensing for librarians and others. Similar questions arise again and again. Librarians are frustrated by the lack of access to quick, clear, practical answers and resources to these questions. This book has been written to set out the basics (and beyond) about digital licensing for librarians and other consumers of licensed digital content (i.e., licensees). This book discusses the questions and issues that arise when interpreting, negotiating, and entering into digital licenses. My hope is to inform you about legal rights and obligations in your license agreements, the role of librarians vis-à-vis license agreements, global aspects of digital licensing, negotiating the best license to meet your needs, and the variety of licensing arrangements which can be used. Chapter 7 of this book sets out many specific questions I have been asked at in-person and online seminars, by e-mail and on my blogs, with answers to help you through the licensing process.

Licensing content is a specialty that seemed to appear out of the blue and, for some libraries, now encompasses the full-time job of at least one librarian. The purpose of this book is to help demystify the licensing process, to provide you with a clear understanding of licensing in the specific context of your library, and through knowledge, to empower you to take an active role in your licensing arrangements. This book is intended for libraries of all types—public, school, government, college and university, and special libraries—and for all sizes—
from solo librarians located in one state to librarians in multinational organizations.

Although the information in this book is provided from the perspective of a library, it should be helpful for publishers, vendors, aggregators, and any content owners who license their content to libraries, because it will educate them on the licensing process through a library’s eyes. Other users of electronic databases and periodicals, such as archives, museums, governments, educational institutions, and corporations, should also find valuable information in this book when they are licensing digital resources for use in their institutions.

This book is meant as a practical guide; it does not set out a comprehensive review of this area of the law, which may encompass contract law, copyright law, and other areas. Nor should this book be relied upon as providing legal advice. Proper legal consultation should be obtained where necessary.

As a practical guide, this book provides and refers to various checklists and precedents. Use these by adapting them to fit your particular needs in your specific circumstances. Determine whether the clauses in a checklist are relevant to your situation. Keep in mind that a license agreement that works for one library may not fit the needs of another library. It may not even fit the needs of the same library in two different licensing situations for different digital content.

I began providing information in this area through a few conferences I attended at which I led a seminar on digital licensing. Shortly afterward, I began giving the same seminar through my own company, Copyrightlaws.com, and often in conjunction with various library and other associations, to audiences ranging from six to sixty persons. I have presented this seminar, which I continue to teach today, throughout Canada and the United States, and in London. Since 2002 I have taught the online course Digital Licensing Online on an ongoing basis. I have also been busy writing articles on digital licensing in North American and international library publications and in The Copyright and New Media Law Newsletter, which I also edit. Furthermore, on behalf of my clients, I continue to draft plain English license agreements; interpret license agreements; educate about licensing content, contracts, and copyright law; develop licensing policies; and determine and initiate strategies for licensing digital content. These experiences led me to write Licensing Digital Content, and to enhance this second edition of it, in order to provide a one-stop source for librarians to find information on licensing digital content.
While reading this book, keep in mind that digital technology is rapidly changing and this may affect the way we license works in the digital environment. As such, any discussions of relevant licensing terms and conditions in your licenses should be carefully reviewed in light of the most up-to-date technological and legal developments, and in light of your own circumstances. For instance, a library licensing an electronic database would have different concerns than a library licensing a photograph for posting on its own website, just as a solo librarian licensing an electronic journal would have different concerns than a librarian in a global company licensing the same journal.

I am always interested in hearing your suggestions about licensing. I may be reached at www.copyrightlaws.com, and you may post comments about this book and licensing in general at www.licensingdigitalcontent.blogspot.com.

Happy licensing!

**LAST WORD**

Have fun! Digital licensing is a fun area because it is still relatively new and allows for creative solutions. When you work out an agreement that is satisfactory to both involved parties, it can be a very rewarding experience. Keep in mind that you will be contributing to what one day may evolve into an industry standard in the digital licensing world—a standard that we all strive for while trying to understand this complex and convoluted area of law.
This book is full of tips to help you ensure your license agreements work for you. However, for those looking for a “crash course,” the following are nine basic points you should always follow when negotiating digital licenses.

1. *Avoid oral licenses*. Although not always mandatory, use written agreements. Your written license is a summary of the terms and conditions of use of the licensed content and will be used for interpretation purposes by you and others in your library throughout the duration of the license.

2. *Before reading any license agreement offered to you, write down on a blank piece of paper the “must-haves” for this license arrangement*. If offered a written license, carefully read the license from beginning to end before mentally or actively marking necessary amendments to the agreement (based on your “must-have” list).

3. *Understand your obligations*. Before signing on the dotted line, make sure you understand and are comfortable with the obligations the license demands of you. Do not base your agreement on any oral representations. If you see a clause you do not like, but the other party tells you not to worry because it will never be enforced, get that clause removed. Make sure
you can live up to any obligations in the agreement. When in doubt, ask questions, lots of questions.

4. *Cover all issues.* Do not avoid inserting any relevant issues in the agreement because you think those issues might “scare off” the other party. It is best to put everything on the table at the beginning and to avoid disputes in the future. Be honest and direct and negotiate in good faith.

5. *Avoid legal language.* Simple nonlegalistic language is the best approach. You want wording that is clear to the two parties signing the agreement, and to anyone who needs to interpret or apply that agreement later. Defining any ambiguous or new technical words can help with this.

6. *Use consistent words and terms.* Do not use the word “content” in one clause, “material” in another clause, and then “publication” in a third clause.

7. *Each license agreement is unique.* A license agreement that works for one library may not fit the needs of another library. It may not even fit the needs of the same library in two different licensing situations for different digital content.

8. *Be creative, patient, and flexible.*

9. *Know when to walk away.*
See also contract; license agreement
alternative dispute resolution clause, 84
amendment, 84–85, 139
American Association of Law Libraries, 12
arbitration clause, 140. See also electronic material
archive copy
defined, 139
licensing clause on, 78–79
licensing questions on, 115–117
Article 2. See Uniform Commercial Code
assignment
boilerplate clause on, 91
defined, 35–36, 140
license vs., 35–36, 106
authentication, 140
authorized signature. See signing/signature authority
authorized site
global licensing and, 30
licensing clause on, 73–74
authorized site (cont.)
licensing questions on, 113
authorized use, 57–58, 148
authorized user
defined, 148
global licensing and, 30
licensing clause on, 72–73
licensing questions on, 113–114

B
backup copy, 140
battle of the forms, 140
Berne Convention, 29–30
binding effect clause, 85
boilerplate clauses
alternative dispute resolution, 84
amendments, 84–85
assignment, 91
binding effect, 85
checklist for, 138
confidential information, 85–86
currency, 86
defined, 140
entire agreement, 86–87
force majeure, 87
governing law, 87–88
independent parties, 88
interpretation, 89
negotiating, 92
notice, 89
remedies, 89–90
severability, 90
signature authority, 90
survival, 91
transferability, 91
waiver, 92
See also licensing clauses
breach, 140

C
California Digital Library (CDL), 151
choice of law, 141
clauses. See boilerplate clauses; licensing clauses
click-through agreements, 107
clickwrap agreement/license, 141
collective societies, 13–14
commercial use, 111
compensation
common misconceptions, 32
currency considerations, 86
in example license agreement, 26
license fee/payment, 59–64, 115
licensing clause on, 59–64
compliance education, 122–123
concurrent users, 148–149
confidentiality, 85–86, 141, 145
conflict of law, 141
consortia, 36–37
content
access to, 65–66
defined, 37
delivery of, 65–66
licensing clause on, 50
See also electronic material
contract
basic principles, 41–43
common clauses, 42–43
components in valid, 42
defined, 37, 41, 141
in example license agreement, 26
oral, 41–42, 95
privity of, 40
written, 41–42, 106, 120
See also agreement
contract clauses. See boilerplate clauses; licensing clauses
copies
copyright considerations, 109
defined, 141
limitations on exclusive rights, 131–135
copyright
  collective societies, 13–14
defined, 141–142
digital content and, 108–110
  international law, 29–30
  online resources, 151–152
Copyright Act (1976)
  about, 141–142
  copyright infringement, 143
  fair use, 38–39, 56, 129, 143
  first sale doctrine, 143
  interlibrary loan, 131–135
Copyright Clearance Center, 14
copyright infringement, 143. See also fair use/fair dealing
copyright ownership
  common misconceptions, 31
  in example license agreement, 26
  licensing clause on, 74
Copyright Questions and Answers blog, 105
coursepacks, 142
Cox, John, 12
Creative Commons, 14–15
credits, licensing clause on, 71
currency clause, 86
digital licensing
  authorized sites, 113
  authorized users, 113–114
  content-specific issues, 108–110
  defining words in licenses, 111–112
  determining what’s being offered, 21
  developing licensing needs assessment, 17–22
  fair use questions, 112
  frequently negotiated areas, 115–116
  general questions on, 105–108
  global issues, 28–30
  identifying items missing from license, 21–22
  identifying key issues, 19–21
  indemnities, 116
  interlibrary loan questions, 112
  issues after signing license, 116–117
  making an offer, 22
  needs-based licensing, 18–21
  negotiation-related questions, 22, 108, 110–111
  possible duties, 123–125
  record-keeping, 114–115
  warranties, 116
Digital Millennium Copyright Act (1998), 43–44
Digital Performance Right in Sound Recordings Act (1995), 43
digital rights management, 37–38
disclaimer, 79–80, 142
discussion lists, 151
display, 142
dispute resolution, 84
distributor, 142. See also end-user
DMCA. See Digital Millennium Copyright Act
documentation, 66, 114–115
domain, 142
domain name, 142
download, 142
DRM (digital rights management), 37–38
duration of grant of rights clause, 75

E
EBLIDA (European Bureau of Library, Information and Documentation Associations), 152
education, compliance, 122–123
electronic material
basic concept, 4–5
copyright protection, 108–110
defined, 37
determining ownership, 110–111
determining usage, 110
differences from print version, 7–8, 33
global issues in licensing, 28–30
industry standards for licenses, 8
key licensing concerns, 5–6
licensing clause on, 57
licensing questions on, 112
organizations licensing, 13–15
sampling, 110
subscription considerations, 6–7
subscriptions, 6–7
terms and conditions of use, 106
e-mail agreements, 95
end-user
common misconceptions, 32
defined, 38, 143
entire agreement clause, 86–87
e-rights clause, 57
exclusivity, 38

F
fair use/fair dealing
common misconceptions, 34
defined, 38–39, 143
in licensing clause, 56
licensing questions on, 112
limitations on exclusive rights, 129
online resources, 151–152
privity of contract and, 40
first sale doctrine, 143
force majeure, 87, 143

G
global licensing, 28–30
governing law
boilerplate clause on, 87–88
in licensing content, 28–29
government agencies, 46
grant of license. See use

H
host name, 143

I
ICOLC (International Coalition of Library Consortia), 37
ILL. See interlibrary loan
indemnity
defined, 143
licensing clause on, 81–82
licensing questions on, 116
independent parties clause, 88
industry standards, 8–9
infringement, 143
integration clause, 145
intellectual property
international treaties, 29–30
online resources, 152
interlibrary loan (ILL)
common misconceptions, 33
defined, 143
INDEX

in licensing clause, 55–56
licensing questions on, 112
limitations on exclusive rights, 131–135
International Coalition of Library Consortia (ICOLC), 37
International Federation of Library Associations and Institutions, 12, 152
Internet, 144
Internet protocol (IP), 144
interpretation clause, 89
IP address, 144

J
jurisdiction, 29, 144

L
LAN (Local Area Network), 144
lawyers
negotiations and, 102–103
taking advice of, 107
liability, 81–82, 144
Liblicense, 11–12, 151
license
assignment vs., 35–36, 106
changing clauses, 121
common misconceptions, 33
compliance education, 122–123
deals on, 106–107
defined, 35–36, 144
defining words in, 111–112
global issues, 28–30
governing law in, 28–29
industry standards, 8
issues after signing, 116–117
key concerns, 5–6
length of agreement, 119–120
maps and, 109
meeting particular circumstances, 121
multiple, 121–122
negotiable, 4, 94–96, 106–107
negotiating, 22
nonnegotiable, 4, 94, 106
online resources, 4, 94, 106
plain language, 120
pricing models, 61–64
site, 147
technological needs, 125–126
written, 41–42, 106, 120
See also model license
license agreement
asking questions, 23
common clauses in, 26–27
common misconceptions, 30–34
consortia, 36–37
content, 37
defined, 25, 36–37, 40, 144
digital licensing, 37
digital rights management, 37–38
end-user, 38
essential concepts, 35–44
exclusivity, 38
fair dealing, 38–39
fair use, 38–39
library exceptions, 38–39
licensee, 39
licensing, 38–39
licensor, 39–40
privity of contract, 40
reasons for, 2–4
reviewing existing, 23–24
rights, 40
See also licensing clauses
license fee/payment, 59–64, 115
licensed content. See content
licensee
common misconceptions, 31–32
defined, 39, 144
licensing clause on, 67–69
need for agreement, 2–3
licensee (cont.)
   obligations of, 67–69
licensing. See digital licensing
licensing clauses
   archiving, 78–79
   authorized site, 73–74
   authorized use, 57–58
   authorized user, 72–73
   changing, 121
   checklist for, 137–138
   content covered by the
      agreement, 50
   continuing access to licensed
      content, 65–66
   copyright ownership, 74
   credits, 71
   definitions, 49
   delivery of licensed content,
      65–66
   disclaimers, 79–80
   duration of grant of rights, 75
   e-rights, 57
   fair use/fair dealing, 56
   government agencies and, 46
   indemnity, 81–82
   interlibrary loan, 55–56
   license fee/payment, 59–64
   licensee obligations, 67–69
   licensor obligations, 64–65
   limitation of liability, 81–82
   monitoring use, 69
   moral rights, 70
   parties to the agreement, 47–48
   perpetual access, 78–79
   preamble, 47
   renewal, 76–77
   rights granted/license, 51–54
   sublicenses, 54–55
   support and documentation,
      66
   term of agreement, 75
   termination, 77–78
   territory, 71
   usage restrictions, 58–59
   warranties, 80–81
See also boilerplate clauses;
   license agreement
licensing needs assessment,
   17–21
licensing policy
   creating, 22–24
   determining need for, 22
   example of, 24–28
   negotiations and, 108
licensing principles
   about, 8–9
   best uses, 11
   examples of existing, 12
   negative aspects, 10–11
   negotiations and, 108
   positive aspects, 9–10
   reviewing, 24
licensor
   common misconceptions,
      31–32
   credits for, 71
   defined, 39–40, 144
   licensing clause on, 64–65
   need for agreement, 2–3
   obligations of, 64–65
   limitation of liability clause,
      81–82
   liquidated damages, 142
   Local Area Network (LAN), 144

M
managing multiple licenses,
   121–122
maps, licenses and, 109
material, 145. See also electronic
   material
material alteration, 145
material breach, 140
material term, 145
merger clause, 145
minor breach, 140
mirror image rule, 140
model license
  about, 8–9
  best uses, 11
  examples of existing, 11–12
  negative aspects, 10–11
  negotiations and, 108
  positive aspects, 9–10
  reviewing, 24
  modification, 84–85, 139
  monitoring use, 40, 69
  moral rights, 30, 70
  multiple licenses, 121–122

N
  national treatment concept, 29–30
  negotiable license, 4, 94–96, 106–107
  negotiations
    boilerplate clauses, 92
    common misconceptions, 31
    defined, 93, 145
    e-mail agreements, 95
    global licensing and, 30
    oral agreements, 95
    participants in, 102–103
    preparing for, 110–111
    process steps, 17–22
    role of lawyers, 102–103
    threats and, 94–95
    tips for, 96–104, 108
    understanding perspectives, 93–94
  network, 145
  node, 145
  non-assignable, 145
  nondisclosure agreement, 145
  nonexclusive, 38, 145
  nonnegotiable license, 4, 94, 106
  nontransferable, 145
  notice clause, 89

O
  online resources, 151–152
  on-site use, 30
  oral agreement/contract, 41–42, 95

P
  parties to the agreement clause, 47–48
  party
    defined, 146
    in example license agreement, 26
    independent, 88
    third party, 111
  penalty, 146
  permitted use, 148, 151–152
  permitted user, 148
  perpetual access clause, 78–79
  perpetual license, 146
  personal use, 112
  preamble clause, 47
  print material
    differences from electronic version, 7–8
    licensing questions on, 112
    subscriptions, 6–7
  privacy, common
    misconceptions, 33
  privity of contract, 40
  public access terminals, 146

R
  record-keeping, 114–115
  remedies, 89–90, 146
  remote access, 146
  renewal, 76–77, 117
  reproductions. See copies
  rights
    defined, 40, 146
    license clause on, 51–54, 75
    third-party, 111
S
scanned images, 109
security, 146
separability clause, 90, 146
server, 146
severability clause, 90, 146
shrinkwrap agreement/clause
defined, 94, 146–147
negotiability of, 106
signing/signature authority
boilerplate clause on, 90
click-through agreements, 107
defined, 147
site
authorized, 30, 73–74, 113
defined, 147
global licensing and, 30
site license, 147
standard agreement
about, 8–9
creating, 13
negative aspects, 10–11
positive aspects, 9–10
statute of frauds, 147
sublicenses clause, 54–55
subscription
defined, 147
electronic material, 6–7
pricing models, 62–63
print material, 6–7
support and documentation
clause, 66
survival clause, 91

U
UCITA. See Uniform Computer
Information Transactions
Act
unauthorized user, 149
Uniform Commercial Code, 140,
148–149
Uniform Computer Information
Transactions Act, 43, 148
United States Code, 142–143
upload, 148
use
authorized, 57–58, 148
commercial, 111
defined, 148
determining, 110
licensing clause on, 57–59
monitoring, 40, 69
on-site, 30
permitted, 148
personal, 112
restrictions on, 57–59
terms and conditions of, 106
See also rights
user
authorized, 72–73, 113–114, 148
common misconceptions,
32–33
concurrent, 148–149
defined, 148–149
defined, 148
end-user, 143
permitted, 148
unauthorized, 149

T
technological needs, 125–126
term, 75, 147
terminal, 147
termination, 77–78, 147
territory, 30, 71
third party, 111
third party rights, 146
transferability, 91, 145

V
venue, 149

W
waiver, 92, 149
warranty
defined, 149
in example license agreement, 26
licensing clause on, 80–81
licensing questions on, 116
workstation, 149
World Intellectual Property Organization (WIPO), 30, 44
written agreement/contract, 41–42, 106, 120
The revised edition of this popular one-stop resource covers the basics of digital licensing for librarians in a plain-language approach that demystifies the process. Written from the librarian’s perspective, this second edition updates licensing terminology and changes in technology. It covers opportunities for cost savings, includes further information on the global aspects of licensing, and explains how to educate organizations that have signed license agreements.

Librarians play a unique role in license agreements and this book, which also includes a comprehensive checklist for a digital license, gives library professionals and students the tools needed to negotiate and organize license agreements.

You may also be interested in:

- The Whole Digital Library Handbook
- Protecting Your Library’s Digital Surveys
- Metadata in Practice
- Licensing Digital Content, Second Edition

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