

Licensing Electronic Content in Today's Information Marketplace

Ann Okerson¹

Yale University, New Haven, CT, USA

Abstract. This session will develop topics such as: what is a license, what is a shrinkwrap license and is it binding, how do licenses or contracts relate to national copyright laws, what is a good negotiating stance, what to look for in a license (key issues), and where to look for more information. The session will be outlined by a series of overheads that can help to guide the library professional who needs to work through these matters during the course of negotiating for electronic information content.

The article contains the text of the transparencies shown during the presentation.

1. Examples of Licensing Language: Quirky!

- **From “Weird AI” Yankovic:** “The owner of the copyright in this motion picture has authorized its use in this cassette for the purpose of private home viewing without any charge of any kind. Any other use of this cassette, including any copy, reproduction, or performance of any of the material in it is an infringement of copyright and may result in civil liability or criminal prosecution as provided by law.”
- **“Weird AI” Continues...** “But if you do insist on copying this program, please be aware that the patented Copy-Stop (r) system . . . will cause severe damage to your video cassette recording device accompanied by a bright blue-grey flash and strong acrid odor, which may in turn affect nearby house plants and cause discoloration of fine upholstery. In addition, you may experience headaches, drowsiness, nausea, severe loss of memory, high blood pressure, nosebleeds and the heartbreak of psoriasis.”
- **And Finally...** “Household pets may develop similar symptoms including extreme personality disorders and occasional spontaneous combustion. We’re not kidding about this. Unlawful duplication may result in local civil unrest, meteorological disturbances, and volcanic eruptions. The producers of this program assume no liability for any of the consequences resulting

¹© Ann Okerson. Readers of this article may copy it without the copyright owner’s permission, if the author and publisher are acknowledged in the copy and the copy is used for educational, not-for-profit purposes.

from your stupid, unthinking, greedy and careless attempt to deprive them of income.”

2. WWW Licensing Tools

- LIBLICENSE website: <http://www.library.yale.edu/~llicense>
- LIBLICENSE-L internet discussion list: Liblicense-l@lists.yale.edu
To subscribe, send a message to listproc@lists.yale.edu; say “subscribe liblicense-l Your Name”

3. What is a License?

- Licensing is “granting rights in property without transferring ownership of it.” (Jay Dratler, in *Licensing of Intellectual Property*)
- An agreement negotiated between two willing parties (buyer / seller) that describes every aspect of the “deal”: users (who, when, how many); use (how much, what, where (sites)); technology conditions (both parties)); price; liabilities and promises; term and termination
- A legal and binding contract, signed by authorized and responsible parties
- Means exactly what it says
- Might be declared unenforceable (but don’t count on it . . .)

4. Shrinkwrap Licenses

- The web counterpart is a “clickable” license; sometimes concealed: “by visiting this site, you agree”
- May be valid

5. Licensing: Relationship to Copyright Law

- Can restrict rights in copyright (ILL is commonly restricted or prohibited)
- Can enhance those rights (downloading, storing, coursepacks)

6. Negotiating Licenses

- Good faith discussions
- Builds or evolves a relationship between two parties
- Meeting of minds on both sides
- Results in mutually satisfactory deal: each party a *little* unhappy
- Sometimes fails . . . then what?

6.1. Getting Started

- Read the proposed contract
- Understand terms / definitions / limitations
- Understand commitments of both parties
- Flag areas of concern
- Ask yourself: “Is anything missing?”

6.2. Key Questions

- What does your institution need – in general (requirements of legal counsel), your colleagues, your users?

6.3. Learning

- Some training is helpful; self-training goes a long way
- Common sense plays a big part

7. Key Issues

7.1. Users and Uses

- Who needs to use the material? (students, faculty, administration, researchers, the public?)
- How many users (simultaneous users)?
- What do they need to do with the material? (view, download, print, transmit, teach, store, save, publish, quote, resell?)

7.2. Perpetual Access

- What do you get at the end of the contract period?
- Can you get/keep a tape or CD?
- Is it in a medium you can work with?
- Can you negotiate for physical ownership?
- Can you make back-up copies?

7.3. Support

- Manuals / documentation
- Updates
- Training of staff
- Training of users
- Access to vendor support staff when difficulties arise

7.4. Technical Issues

- How is access achieved? (remote/local, single/multiple)
- Do you have the technology needed?
- Is there agreement regarding authorization and validation techniques?

7.5. Pricing

- Is the model clear and unambiguous?
- Is the price affordable?
- Can you negotiate extra incentives (e.g., 2-year license)?
- Are there hidden costs (replacements, tariffs, price increases during contract term)?

7.6. Sites and Location

- Where are your users? (library, office, classroom, laboratory, hospital, on-campus residence, private residence, distance-learning location)
- How many sites?
- How defined? (multiple campuses/facilities, distance learning, mobile users)

7.7. Disclosure / Confidentiality

- Privacy of users and user data (usage statistics versus monitoring)
- Privacy of provider (often their requirements are excessive or unnecessary)
- Ask for specific language (*What exactly* is “confidential”?)

7.8. Warranties

- Owner “warrants the media for xx days”
- Owner “guarantees” performance to a certain standard (*or...*)
- Owner provides “as is” with no warranty
- Owner “makes no representations”
- Seek some kind of warranty! Clauses not usually written to benefit licensor

7.9. Liabilities / Terminations

- Institution often asked to be liable for the behavior of individual users
- Agree to “reasonable efforts” language
- Avoid termination for single acts (seek a “cure period” and “mutual efforts”)
- Accept liability only for negligent or willful acts of institutional employees

8. Words of Wisdom: Licensing can be Bewildering

- Someone asked Meriwether Lewis (of Lewis and Clark fame) if he had ever been lost . . . he said no but I was once bewildered for three days...

Further Licensing Articles and Resources

Ann Okerson, “The World of Licensing: Issues, Concerns, and Promises,” Canadian Association of Research Libraries Workshop, Ottawa, Canada, 27 October 1997. <http://www.uottawa.ca/library/carl/slidepresentations/A-Okerson/presentation.htm>

Ann Okerson, “Buy or Lease? Two Models for Scholarly Information at the End (or the Beginning) of an Era,” *Daedalus; Journal of the American Academy of Arts and Sciences*, Fall, 1996. Vol. 125, No. 4, pp. 55-76. Special issue on libraries called “Books, Bricks, and Bytes”, <http://www.library.yale.edu/~okerson/daedalus.html>

Ann Okerson, “What Academic Libraries Need in Electronic Content Licenses,” Presentation to the STM Library Relations Committee, STM Annual General Meeting, October 1, 1996, <http://www.library.yale.edu/~okerson/stm.html>

Bibliography on the Liblicense Web site with numerous references and links: <http://www.library.yale.edu/~llicense/bibliogr.shtml>

Links on the “licensing resources” section of the Liblicense Web site: <http://www.library.yale.edu/~llicense/liclinks.shtml>

Principles agreed upon by 80 library consortia:

<http://www.library.yale.edu/consortia/>; the actual Statement is at <http://www.library.yale.edu/consortia/statement.html>