Licensing to Wed

Harmonizing the licensing process with resource sharing needs for a fulfilling partnership

Sunshine Carter, Carol Nelson & Kyle Triska
May 10, 2016
Minitex ILL Conference
Agenda

- Our Environments
- Our Relationship
- Scale, Scope & Goals of UL Licensing
- Minitex Workflows, Processes and Needs
Our Environments
University of Minnesota, Twin Cities

- **Demographics**
  - 30,000 undergraduate students
  - 16,000 graduate/professional students
  - 17,000 faculty & staff

- **E-Resources**
  - 91,000 e-journals
  - 632,000 e-books
  - 500 subject-specific databases
E-Resource Management

- E-Resource Management Unit
  - 7 FTE
  - All electronic acquisitions, access & management
  - Licensing (~8 licenses per month)
## Timeline of Important Events

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>1971</td>
<td>Minitex begins - is based at the University of Minnesota Twin Cities Campus</td>
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<tr>
<td>1976</td>
<td>Revision of the U.S. Copyright Act - with provisions for interlibrary loan use</td>
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<td>1990</td>
<td>CDROM titles begin showing up in libraries - licensing questions start to be a concern</td>
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<td>1994</td>
<td>Minitex begins using Ariel</td>
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<tr>
<td>2000</td>
<td>Minitex begins using MEDD (Minitex Electronic Document Delivery) Direct to patron delivery</td>
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</tbody>
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## Timeline of Important Events (continued)

<table>
<thead>
<tr>
<th>Year</th>
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<tbody>
<tr>
<td>2009</td>
<td>Restrictive electronic licenses begin to have an impact on interlibrary loan</td>
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<tr>
<td>2012</td>
<td>Minitex begins using Article Exchange, and quickly becomes OCLC’s largest user.</td>
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<tr>
<td>2014</td>
<td>Minitex discontinues using Ariel</td>
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<tr>
<td>2015</td>
<td>University Library staff begin meeting quarterly with Minitex staff to discuss electronic resource licensing for ILL</td>
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</table>
Electronic Resource Fills from U of MN Twin Cities collections

FY 2016 is estimated volume through 6/30/2016
Number of items delivered electronically from Minitex
Regional libraries that fill using electronic resources

- Minnesota State University - Mankato
- Metropolitan State University
- CLIC - Augsburg College
- Bethel University & Bethel Seminary
- Concordia University
- Hamline University
- Saint Catherine University - St. Paul and Minneapolis
- University of Northwestern - St. Paul
- University of St. Thomas
- Macalester College
- Mayo Clinic
- University of Alberta
Current Relationship

UL/Minitex working together to streamline processes and continue to renegotiate ILL rights
Scale, Scope & Goals of UL Licensing
Disclaimer

I am not a lawyer.
This is not legal advice.
Licensing Scale, Scope

- **Resource Type:**
  - E-journals, e-books
  - Databases, abstracts, indexes
  - Data sets
  - Multimedia content
- ~8 per month signed
- ~20 licenses in the review/negotiation pipeline at any time
Licensing Scale, Scope

● **Current statistics***
  ○ Average 10 business days for initial review
  ○ Average 10 business days of active negotiation
  ○ Average 20 business days from receipt to completion

● **Fun facts**
  ○ Avg. 6 pages, ranging from 1 to 31 pages
  ○ Avg. 2500 words, ranging from 100 to 150K+

*For licenses received in the last 6 months
**For licenses received since July 2015.
A contract is a legally binding agreement between two or more parties. The elements of a contract may be varied, but generally include consideration, offer and acceptance, and legally capable parties. The remedy for breach of contract can vary depending on the nature of the contract.
Licensing Goals

- **Uses**: View, print, copy, download, link, fair use, scholarly sharing, course use, interlibrary loan
- **Users**: Site, definition, walk-ins, how many?, means of authentication, remote access
- **Perpetual / Archival Access**
- **Other business (library) needs**: Performance, perpetual/archival access, usage statistics
- **Other legal (University) needs**: Indemnification, governance, confidentiality, termination, etc.
Current approach

1. Revamped tracking spreadsheet to align with Alma
2. Adding or Updating ILL rights information…
   a. Amy Nixon: Library Associate 3 since 9/15
   b. 40 licenses added / updated since 12/2015
3. Meeting quarterly to discuss barrier licenses
   a. Unknown status
   b. No secure electronic transmission allowed
4. Investigate renegotiation of license
Why Re-Negotiate Licenses

- Licenses can be old with outdated language
- Full ILL rights has become a standard clause in modern licenses
- Fairly easy to ask for (and receive) ILL rights
- Other outdated clauses can be updated at the same time
“Accept the challenges so that you can feel the exhilaration of victory.”

- G. S. Patton
The road to victory is not always glamorous!
Licensing Strategies

1. Establish ideal language
2. Read and review licenses for legal and business needs
3. Ask for your preferred language
Establish ideal language

- Create language for your institutional needs
- Have alternate language: High, Medium, Low
- Create a play book of your language
- "Model" model-licenses
b. **Interlibrary Loan.** Licensee may fulfill requests from other libraries, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in accordance with Sections 107 and 108 of the U.S. Copyright Act. Requests may be fulfilled using electronic, paper, or intermediated means.
Read and review licenses for legal and business needs

- Work with general counsel to help identify the needs of your institution.
- Read the license!
- Read all of the license!
- Note your suggested language changes and additions
  - I use Track Changes in Word
This License Agreement ('Agreement') is made as of [DATE] November 1, 2015 (the "Effective Date") by and between [NAME] of the University of Minnesota through its Libraries located at [ADDRESS] ("Subscriber") and [NAME] of the University of Minnesota, MN 55455 ("Authorized User") concerning rights to the products designated in this Agreement. Together, the School and the Subscriber are referred to herein as the "Parties." This Agreement is effective as of the Effective Date. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.
A. "Subscribed Products" are the products and services identified in Appendix 1 that will be provided to the Subscriber pursuant to this Agreement, which Subscriber will have the right to provide to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.
B. "Authorized Users" are current students, faculty, and staff who are primarily affiliated with the [name] located at [address] ("Authorized Sites"), as well as individuals who are permitted access to the secure network from computer terminals within the library premises and who are making noncommercial use of the services for research, educational, or personal use. Remote access is limited to current students, faculty, and staff, and only to the authorized sites located at [address] ("Authorized Sites") and individuals within the library facilities at the Authorized Sites permitted by the Subscriber to access the Subscribed Products.

2. Grant of Rights
A. During the term of this Agreement (see Section 11), the Subscriber grants Authorized Users a non-exclusive, non-transferable license to engage in the following "Permitted Uses":
   1. access and use the Subscribed Products, and to make them available to Authorized Users, from Subscriber's Authorized Sites;
   2. to reproduce, distribute and publicly display portions of content from the Subscribed Products for the Subscriber's noncommercial research or educational purposes, provided that such content is access-restricted and secured in compliance with the terms of the Agreement and is not made available to anyone other than Subscriber and its Authorized Users;
   3. to reproduce and distribute (in paper handout only) and publicly display portions of reasonable amounts of content from the Subscribed Products to Authorized Users or audience members in the course of a presentation, exhibition, or similar professional activity conducted by Subscriber or in which Subscriber or an Authorized User is taking part; and

3. Prohibitions on Certain Uses
Subscriber and Authorized Users may make no use of the Subscribed Products other than those uses permitted in Section 2. In particular, Subscriber and Authorized Users may not do any of the following:
A. reproduce, alter, create derivative works from, distribute, rent, sell, sublicense, transfer, or assign any content from the Subscribed Products, except as permitted in Section 2;
B. reproduce, alter, create derivative works from, distribute, rent, sell, sublicense, transfer, or assign any content from the Subscribed Products, or otherwise make any commercial use of the Subscribed Products or any content from the Subscribed Products in any manner whatsoever that infringes any copyright or proprietary interest of the Subscriber or any third party;
C. engage in or use any high-volume, automated, or systematic processes to copy or download any content from Subscribed Products, including systematic or routine printing, downloading or copying an entire issue of, or substantial portions of, any Subscribed Products.
Negotiate successfully with the “Getting to Yes” approach

1. Don’t bargain over positions
2. Separate the people from the problem
3. Focus on interests, not positions
4. Invent options for mutual gain
5. Insist on using objective criteria

Ask For & Discuss Suggested Language Changes

- Build strong negotiation skills
- Read Getting to Yes by Fisher, Ury & Patton
- Always ask….they can only say no
- Afraid to ask…then ask for clarification
- Discuss the reasons behind your requests
- Don’t confuse the person with the problem.
Minitex Workflows, Processes and Needs
Standard Minitex Request

MTXURL
- Yourls
  - Proxy
- Primo API
- Soon Alma API
- Searches on
  - Article title
  - Journal title
Human processing still required!

MTXURLS not consistent
- Directly to the article
- To an archive
- Very similar article title in the same journal

And what about the license?
How do we make licenses user friendly?
Google Sheets
- Google Sheets Functions
- Google Query Language
- Conditional Formatting

Benefits
- Dynamic
- Clear information
- Able to be repurposed

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<th>Publisher/Collection Name</th>
<th>T-Drive</th>
<th>Courier w/ Memo</th>
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<th>Recent Change</th>
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The Way Licensing Affects Delivery

We can send the electronic copy

Secure Electronic Delivery:
  Article Exchange
  Or
  MEDD

4 Hours
The Way Licensing Affects Delivery

We can send the electronic copy

Secure Electronic Delivery: Article Exchange Or MEDD

4 Hours

We can send a printed copy from the electronic source

Printed copy by mail Or Scan from campus print source

8+ Hours
We can send the electronic copy

Secure Electronic Delivery:
Article Exchange
Or
MEDD

We can send a printed copy from the electronic source

Printed copy by mail
Or
Scan from campus print source

Cannot use for interlibrary loan

Scan from campus print source
Or
Refer to a library in Minitex Network
Questions?

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tris0020@umn.edu

THANK YOU