



Working paper

Define model access/ consortium agreements

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Introduction

'Define (or adopt, if existing) an appropriate model for licencing the use of library resources via the HeadLine system/service. This should take into account *inter alia* the objective of sharing use of some resources between partner sites, and providing off-campus access to resources with appropriate security measures.'

This workpackage falls into three sections:

- A description of the requirements of a licence for the HeadLine project
- An analysis of the model licences available for use or those which can be adapted to meet the needs of HeadLine, also a summary of the attributes of the licences currently used for resources at the three sites
- Finally the licence selected, with details of the changes or additions that may be needed to make it suitable for HeadLine needs.

Scope

It is not intended that the model licence adopted will replace current licences for all materials accessed by HeadLine; rather it will be a licence that can be used, or offered to vendors for adoption (or adaptation) where current or existing licences are too inflexible for HeadLine needs. Also the model licence may be used to extend access to some materials, ie to offer off-site access, or access for users from partner sites, to material held by another institution. It may also provide a basis for licensing common resources for the duration of the project. (i.e. for resources provided at two or more sites, for instance the Economist CD-ROM)

Related documents

This document is related to the other 'resource' documents in Workpackage 2 and will lead into Workpackage 2.9 **Negotiation with Resource rights-holders.**

Aims

The aims of this workpackage are as follows:

- To find (or create) a licence which can potentially be used for all resources accessed via the headline system;
- To ensure flexibility in access to resources - and ideally to allow remote access to material where this is technically viable so that members of institutions who wish to work from home, or off campus can have access to some resources;
- To provide publishers with a straightforward and clear licence which can be used in negotiating extending access to materials, which can be used for the duration of the project;
- To find a licence that will fit in with existing licence arrangements and provide familiar licensing conditions for suppliers and librarians alike;
- To enable resources which are common to two or more sites, to be licenced together for the duration of the project, to simplify access and administration for these, also to demonstrate how resources can be 'shared' on a collaborative project.
- To outline technically enforceable security measures and access arrangements - ie those which can be implemented simply so that the licence specifications can be enforced technically. For instance if the licence specifies access to institutional members only then this can be enforced by the network login and password Or if the vendor stipulates that the product may be accessed on the campus only, this can be enforced by restricting the service to the IP range of the institution.

Issues

There are several important issues which may need addressing or resolving for this workpackage, and some which must be borne in mind when selecting a licence or negotiating with vendors.

1. The model licence is not necessarily going to replace current licences for all materials accessed by headline - rather it's a model to adopt or to offer to vendors if the ones we have are not suitable for HeadLine's uses or we want to extend access or have a consortium agreement. However, it needs to be flexible enough to cover all resources potentially.
2. At this stage it is not necessary to analyse all the licences at the 3 sites but it is useful to get an idea of the kinds of licence used at each one. At this stage it is probably best to find an appropriate licence and explain why it is the best one, and then it can be used in negotiation and adapted for individual institutions or resources if necessary.
3. Also we will probably need different optional sections, or different versions of the licence, for the various different resource types, e.g. CD-ROMs and online resources.
4. We will have to verify whether we can alter the licences that we look at - ie the JISC and Nesli ones, to suit our needs.
5. It may be useful to enlist 'expert' help, or advice - ie Charles Oppenheim.
6. Also it may be useful to keep aware of developments in this area in other eLib projects, to see if vendors or agents can be approached collectively - this may carry more weight and make less work for vendors. Similarly it will be important to work in collaboration with Decomate, as they are doing similar things for their resources.
7. Consortium agreement, none of the licences studied mention consortium access by using the HeadLine Consortium agreement then it will probably be adequate to name the three institutions as the licensee.

Requirements of a model licence

Format

The main requirement of the model licence for the HeadLine project is that it reflects the hybrid nature of resources accessed via the system and covers material of various format, ie:

Electronic material - which breaks down into:

- Electronic fixed format material (CD-ROMs) and
- Electronic Online material (online resources, including those accessed via the Internet).

Hard copy material is not included here, as it does not need to be licenced (users can take books home), and the project is not concerned with digitising hard copy material for electronic access.

It may be that the licence will have optional sections for different formats of material, which can be added and deleted where applicable.

Off-campus access

The licence must have some provision for off campus access. Resources accessed in this way cannot be controlled by IP restrictions, so user id and password must be used for authentication. Although HeadLine seeks to negotiate access agreements with information providers it is not anticipated that all resources will be accessible in this way. Technical difficulties may prevent this, for instance CD-ROMs are virtually impossible to access outside a Local Area Network (LAN) so cannot be accessed off-campus. Publisher preferences may also inhibit this - they may not want to change access procedures to their products for one eLib project and so may insist on using IP ranges to restrict access to their product. Also some costly resources may be too expensive to network or offer outside the campus, and these may remain standalone or accessed within the library only. The licence will have to be flexible enough that it covers resources accessed within the library or campus network only, those governed by IP restrictions and those which can be accessed outside the campus. However it is important to make the licence flexible enough for all these conditions.

Sharing resources between sites

The licence must also be flexible enough to enable resource sharing - so that where a product is held at two or more sites, a single licence can cover both sites, for the duration of the project. The purpose of this is to demonstrate how the hybrid library can rationalise and share resources.

There should also be some facility in the licence for extending access to a resource, to another institution which does not already have access to it, so that negotiations to bring in an extra site, could use this licence for joint access.

Eg *'This licence grants rights to the consortium of for access to the product(s) below for the duration of the project*

Technical requirements

The licence selected (or created) should provide technically enforceable conditions. These should be easy to implement whilst providing security (and peace of mind) for the vendor, librarian and user alike. These arrangements should ideally require minimal maintenance by the vendor or library, and should provide simple, seamless access to products for users. It is probable that any licences reviewed or selected will not go into great detail about technical access, rather describe who can and cannot use the service. This is not a problem, so long as the licence is flexible enough to allow manageable and secure access arrangements, which will fit in with the aims of HeadLine and the partner institutions.

Existing model licences

JISC

Introduction

The Joint Information Systems Committee and Publishers Association Working Party proposed 'Model Licence' between UK universities and publishers July 1997 is available at: <http://www.ukoln.ac.uk/services/elib/papers/pa/licence/>

Background

This licence was designed for use between UK universities and publishers.

"The 'Standard Licensing Arrangements' working party was asked by the JISC and the Publishers Association to explore options for developing "umbrella" licence models which individual publishers could employ. These generic tools were intended to cover different products and different types of use and would set out the more routine conditions of use, but leave a limited number of commercial issues (e.g. price per access, territory) to be added by different suppliers. The Working Party agreed and were given a budget to commission the drafting of a single generic licence. The resultant model licence formed the report of the Working Party." Taken from Webpage introducing the licence: <http://www.ukoln.ac.uk/services/elib/papers/pa/>

Content

General: This is a very long and detailed licence with flexibility for different kinds of material or environments. This licence contains a detailed 'definitions' section, each of which can be tailored to suit desired conditions and a schedule where the server, copyright notice, authorisation stamp etc, can all be listed.

Format: It is designed as a licence between UK universities and publishers and has provision for different kinds of resource. (CD-ROMs, online etc). Sharing resources is not mentioned (although not prohibited). Presumably to share resources via a single licence would require the partner institutions to be the Licensee. It has optional sections for digitising material, or for conditions that the publisher/user may not want to include,

Network: There is a great deal of flexibility here, instance the site can be just about anything - from one single location, to the entire network.

Off-site users: Off campus access is optional (with the choice of paying extra for this). An off-site user can either be a visitor using within the library, or an authorised user with access to material via the world wide web. The off-site user section allows for either inclusion of that person's IP address, or issuing of a password

Access issues: Technical enforceability is also flexible so that off-site and on-site users can access material by IP range or password, depending on how the licence clauses are selected.

IP range is assumed for access within the network (with space for listing IP addresses of Authorised users in the schedule). The on-site user section allows for access via a password or valid IP address (within the network), although this is not very clear (it seems to have password as optional but IP range as required). Passwords can either be generic or individual for each user.

Evaluation

The licence seems fairly standard for access to material, its main strengths lie in its flexibility to meet just about any arrangement and its clear and detailed definitions. The main weakness of this licence stems from this detail however, as it is difficult to navigate and would need some tailoring to omit digitised material, and select the appropriate clauses for HeadLine's needs. It is thorough though, and covers just about every clause or situation that HeadLine could possibly need and more besides.

NESLI

Introduction

The Seventh draft (25/09/98) of the model licence produced by NESLI - the National Site Licence Initiative is available at <http://www.nesli.ac.uk/nesli-licence.html>

Background

NESLI has been established by JISC as the successor to the Pilot Site Licence Initiative (PSLI). The role of NESLI is to undertake publisher negotiations, ie to provide the best value for money in prices and access and to simplify the process of taking out electronic journal subscriptions (eg creation of a model licence). Also to manage journal subscriptions and to provide access to electronic journals. SWETS and the University of Manchester have been appointed managing agent to deliver the electronic journal service (SWETSNET).

Details about the model licence, taken from the site licence page (url above):

"A new draft of the NESLI Model Licence is now available which incorporates significant changes following the Managing Agent's and the JISC's NESLI Steering Group's discussions with publishers, librarians, and other interested parties such as the PA/JISC Licensing Working Group. The NESLI Licence represents the interests of both publishers and the library community."

Content

General: The licence is shorter and simpler than the JISC one, with very few optional extras. Like the JISC licence it has a 'definitions' section, and a schedule for recording details such as materials, fee, access security procedures, format, media, delivery frequency, storage of materials. This section seems to be very flexible as it is left to the licensee to supply access procedure.

Format: As the background to NESLI shows, the focus is on electronic journals. Provision is made for the Licensee to index materials, which may be more appropriate for journal material but still may be relevant for other resources (for instance if they are being referenced in ROADS). Another point is section 6.2 which states that the Publisher must make the material available not later than the start of business hours on 'the day of publication of the printed version.' Again this may not be appropriate for all resources, particularly those that are not serial based, or do not have a hard copy counterpart.

Network: One unclear point is 4.2 prohibiting mounting any part of the material, 'on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network.' If this means that material can be mounted on the WWW with some limitation of access (ie password protected), then that would suffice for HeadLine resources, but if this licence prohibits any web access to products then this section would have to be changed or omitted.

Walk-in and Off-site users: This licence makes provision for access by walk in users (but does not mention off-site users) but the 'definitions' section clarifies this matter. The definition of authorised users, is staff and students 'who are permitted to access the Secure Network and who have been issued by the Licensee with a password or other authentication.' The definition of Secure Network seems to contain provision for off-site users as follows:

'a network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users and Walk-in Users taking into account the Access Security Procedure as defined in Schedule 6.' Similarly, the site is defined as including users' homes, which also is favourable to off-site access to materials.

Access: There is no specification for how the material will be accessed by users - this can be defined by the Licensee (in Schedule 6 of the licence). The Delivery and Access section refers to Schedule 4 and 6 for access procedures, although section 6.5 mentions 'access codes, identity codes, passwords and the like.'

Evaluation

On the whole this licence seems simple to use and flexible, whilst it does not have the same detail as the JISC licence it is easier to use, would need fewer alterations, and is more 'user friendly'. It does still allow flexibility in access to materials, and if it can be used for resources other than electronic journals would be suitable for HeadLine's needs. We would need to clarify whether it could be adopted for use in a project not related to its own work.

CHEST

Introduction

The CHEST (Combined Higher Education Software Team) agreement information is available at: <http://www.chest.ac.uk/support.html>; this contains 'General Licence Conditions for Software and Datasets Agreements'. The Datasets agreement seems most relevant to HeadLine.

Background

Paraphrased from the CHEST Website: <http://www.chest.ac.uk/>

CHEST negotiates for the supply of software, data, information, training materials and other IT related products to the Higher and Further Education community in the UK; it establishes many arrangements, for example agreeing educational discount prices for about a thousand products, details of which are in the CHEST Directory. CHEST is a not-for-profit organisation within UK Higher Education. It is substantially self funding although it is strongly supported by the Department for Education and Employment through the joint committee of its funding councils.

CHEST agreements are formal contracts between CHEST and suppliers of IT products, usually site licences for a fixed fee.

The licences are therefore not specifically for adoption by other projects, rather licence conditions which they have negotiated for products they provide access to.

Content

General: The licence is short, concise and simple, also easy to read and user-friendly. A Copyright Acknowledgement section, is provided separately. The licence does not include definitions of terms used in the licence. It contains a year 2000 clause.

Format: No mention is made of the format of materials covered by the licence - it is merely referred to as a 'Product'.

Network: The licence is called a 'Site Licence' and other documentation mentions that CHEST is concerned with site licences paid for by a fixed fee.

Off-site users: It appears that off-site usage is not covered by this licence.

Access: all users have to sign the declaration (available from the CHEST Website) to declare that they agree to abide by the terms of this Site Licence. However this licence does not mention access control or any kind of security or authentication.

Evaluation

As this licence is intended for use for CHEST products we would need to verify that this could be adopted and/or adapted for HeadLine use.

This licence is very simple and easy to understand but possibly will not be flexible or detailed enough for HeadLine needs; and it would need considerable additions (for off-site access, access policy etc) to make it suitable.

AHDS

Introduction

The Oxford Text Archive (one of the four AHDS data providers) has a depositor's licence at:

<http://firth.natcorp.ox.ac.uk/ota/public/depos/licencef.html>

Background

AHDS stands for Arts and Humanities Data Service whose aim is to work on behalf of the academic community to collect, catalogue, manage, preserve and promote the re-use of scholarly digital resources. The AHDS's collections are acquired under agreement from individuals, projects, and institutions, or made available to AHDS users through co-operating digital archives and information services. The Arts and Humanities Data Service provides links to its data providers, licences are held by individual providers and are tailored to each one. These providers are Archaeology Data Service, History Data Service, Oxford Text Archive, Performing Arts Data Service, Visual Arts Data Service. (Summarised from AHDS 'how to deposit data' page: <http://ahds.ac.uk/deposit/how.html>)

The Oxford Text Archive licence was considered to be the most appropriate (although they are all quite similar).

Content

General: This licence is short, concise and quite 'user friendly'. It is written specifically for depositors wishing to deposit material with the Oxford Text Archive (OTA), and there is no payment or royalties involved. Also the fact that it is a licence for depositing material make it different in focus from general 'access to material' licences.

Format: No mention is made of the format of material deposited, except that the OTA is allowed to distribute copies of the Data Collection to authorised users in a variety of media formats.

Network: No mention is made of networks, or where/how the material is accessed.

Off-site users: Not mentioned.

Access: Access policies or security of the service are not covered in this licence. Clause 6.1 states that the OTA must take 'reasonable measures' to prevent unauthorised access to duplication of or distribution of the Data collection. An authorisation

Evaluation

This licence is not really adequate for HeadLine needs, it does not cover off-site access, paying for material, formats of material nor access measures. It would need numerous additions and alterations to make it workable for the project, so a different licence would probably be more suitable.

Summary of 'Model Licences'

The table below gives a summary of the attributes and details of each licence.

Detail	JISC	NESLI	CHEST	AHDS
Authority - ie asserting that the publisher owns the material or rights to it	x	X	x	x
Grant of rights	x	X	x	x
Who can use material (authorised users etc)	x		x	x
What for (research/teaching)	x very complex rights with optional sections	x also can send off to other institutions for ILL	x	x
What not for (unauthorised use)	x	x - systematic distribution	x	x
Off-site access	x- optional and optional fee	X		
What users can do with it (ie download or print)	x	X	x	x
Copyright notice	x		x	x
Licensee not to move or alter copyright notice or other 'branding'	x	X	x	
Payment terms	x (very complicated options)	X	x	x no royalties
copyright agreement form for users			x attached	x copy included
publisher keeps publisher's rights	x (if data capture is used)	x (and intellectual property rights)	x	x optional
Publisher can sell material to anyone or anywhere else	x			x
Confidentiality - ie of this agreement	x (licensees duties)	x (Licensee will attempt to safeguard confidential information)	x	
Confidentiality of material	x	X	x	x
Inspection rights for publisher	x (for copyright management system - I think for digitised material)		x	
Warranty - what the publisher will be liable for, or publisher's obligations	x	X	x	x

Detail	JISC	NESLI	CHEST	AHDS
What the publisher is NOT liable for	x	X	x	x
Copyright indemnity - ie if copyright is broken, publisher is covered for loss	x (infringement of intellectual property rights)		x	
Licensee to co-operate and notify publisher of any breach/misuse	x	x (licensee to enforce confidentiality and proper use)	x	
Publicity - either party can mention that they're in this agreement for their own purposes	x	check this?	x	x
Liquidation - what happens if publisher goes into liquidation			x	
Termination - may terminate the contract if...	x	X	x	x
Force Majeure	x	X	x	x
Assignment - can't assign rights or obligations without written consent of the other party	x	X	x	
Notices - to be served by post etc	x	X	x	x
Serverability (can chop a bit off if they both agree)	x	X	x	x
Waiver - if one section is waived then all the rest does not become invalid	x		x	x
Recovery of sums due	x by publisher and by licensee			
Licenser's personnel can be refused admittance if they are 'undesirable'			x	
Arbitration is differences arise			x	
This agreement is governed by English Law	x	X	x	x
This is the entire agreement	x	X	x	x
This is not a joint venture	x	X		x
Allowed to index material (or other in-depth rights for licensee)		X		x
this licence does not exclude statutory rights for librarians		X		
Duration (start - finish dates)	x	X		x
Delivery dates/format		X		

Detail	JISC	NESLI	CHEST	AHDS
Implementation and evaluation	x licensee to report on usage regularly is an optional clause	X		
Schedules (all the real data about servers and location etc)	x	X		
Definitions	x	X		x
Contact details and names	x	X		x
Media of material	x	X		x
Access mechanisms	x	X		
Year 2000 compliancy			x	

Current resource licences at the LSE

Licences from various vendors have been examined, and although licence conditions differ between vendors there are many common elements.

General: Most have all the general features (Assignment, notices, 'force majeure', waiver, English law, severability);

Specifics: many have other common features such as termination, terms, liability, definitions, scope, payment). To summarise there are very few details in these licences which are not covered in all of the model licences examined.

Technical details: The only major thing which seems more prominent in these individual licences than in the model licence is the technical detail. For instance the UMI network licence has details of how many people can access the product at once, other licences have inclusions about copying the databases onto hard disc (for general use or for backup purposes), and many have clauses about defective discs.

The model licences which leave spaces for the parties to fill in how and where the product will be accessed will be able to cover this area. Otherwise there may have to be inclusions for this extra data.

Adopted licence

Both the JISC licence or the NESLI licence will be adequate for use in HeadLine.

NESLI is probably the easiest to use and navigate, and does not have as many superfluous sections which would need removing (for instance those about digitising material). However NESLI is designed for access to electronic journals so there would need to be some adaptation of clauses to include other types of material.

In the process of altering the licence it would be useful to include more technical details, (as found in the licences for CD-ROM products), for instance number of concurrent users allowed, technical requirements of the product.

The 'Schedules' section at the end of this licence would be ideal for this as they provide space for format, media and delivery schedule of each item of the materials.

A further schedule could be inserted as follows:

"TECHNICAL NOTES

[List of technical requirements, number of concurrent users permitted, downloading onto hard disc policy]"

Summary of 'Model Licences'

Details - ie start, finish date, names and addresses, material to be supplied, format, security - this would vary from service to service, payment terms.

General - ie this is covered by English law, termination, notices, waiver, severability etc.

Other 'general' things ie publicity, liability of publisher, liability of licensee, confidentiality

Specific details - who can use, for what purpose, on campus or off campus, walk in users, how it can be used, copyright notices, branding etc, whether it can be supplied for inter-library loan.

Technical details: The only major thing which is less prominent in model licences is technical detail. For instance the UMI network licence has details of how many people can access the product at once, other licences have inclusions about copying the databases onto hard disc (for general use or for backup purposes), and many have clauses about defective discs.

The model licences which leave spaces for the parties to fill in how and where the product will be accessed will be able to cover this area. Otherwise there may have to be inclusions for this extra data.)

NESLI agreement - adapted for HeadLine needs (draft)

This has been appended as a separate document, with alterations or additions included to make it suit HeadLine. Since this is a draft document, and the model licence has not yet been formerly chosen, the alterations are highlighted in the licence. Also some points may still need discussion, and so have not been clarified.

Access the draft "NESLI-HeadLine" model licence at

<http://decomat.lse.ac.uk/headline/publications/n-licence.html>

or <http://decomat.lse.ac.uk/headline/publications/n-licence.pdf>