

## D-Lib Magazine September 1999

Volume 5 Number 9

ISSN 1082-9873

# The LIBLICENSE Project and How it Grows

---

Ann Okerson  
Associate University Librarian  
Yale University  
[Ann.Okerson@yale.edu](mailto:Ann.Okerson@yale.edu)

---



## Introduction

The LIBLICENSE Project was established to inform and educate members of the information supply chain, particularly (but not exclusively) librarians, about how effectively to contract for electronic information resources. The project supports:

1. the LIBLICENSE web site <<http://www.library.yale.edu/~llicense/index.shtml>>;
2. the active and ongoing liblicense-l discussion list <<http://www.library.yale.edu/~llicense/mailling-list.shtml>>; and
3. the LIBLICENSE software (available on the Project web site above), which publishers, librarians, vendors, and other interested parties can download and use to create and customize their own electronic resources licenses.

Creation of, and ongoing enhancements to, the project were made possible by CLIR (the Council on Library and Information Resources in Washington, DC; more information at: <<http://www.clir.org>>). In 1996, CLIR made the first of two grants to Yale University to create and launch the educational web site, and in the fall of 1997, the organization made a second grant to develop the freely downloadable software. The Project has now reached maturity and continues to benefit the research and scholarly community beyond the lifetime of the grants. This is a brief report on the Project's origins, goals, and achievements, with some thoughts about the future.

## Why Did We Create LIBLICENSE?

The Project grew out of the observation that, by the mid-90s, the abundance of scholarly and scientific publishing in electronic form was putting new demands on the way libraries and publishers conducted their business together. Where traditional print materials were distributed by sale in an economy governed almost exclusively by copyright statute, electronic resources were already being distributed under other economic and business models, chiefly those governed by the special kinds of contracts commonly called licenses. As the number of available electronic resources delivered by

publishers and vendors was growing rapidly and seemingly without end, librarians and publishers around the world were stumbling towards an understanding of this new business environment. An increasing number of players in the information chain were sitting in their offices either creating license agreements to send to customers or reading licenses that they had been sent by information providers. There was a strong sense of the risks of inexperience or failure, but without a correspondingly strong public sense of the needs of the different members of this group and how to arrive at mutually beneficial solutions and language.

In April of 1996, the Yale Library wrote to CLIR asking for funding to support legal and web design expertise to create an online, World Wide Web tool to assist academic research libraries in negotiating electronic licensing agreements. The tool was to be an online primer or textbook that was, from the moment of creation, accessible to any individual organization via any standard WWW browser. As an online resource, it could be continuously revised. As we wrote at the time:

The reason we make this proposal is that licenses are becoming standard vehicles for arranging for ownership, lease, or access to electronic information, information that may take one of several formats (i.e., remote online connection, tape or CD-ROM locally networked, or CD-ROM stand-alone). Licenses are, for the most part, negotiated between commercial (for-profit or not-for-profit) publishers one at a time with individual institutions. However, increasingly they are being arranged between information providers and groups of libraries (statewide or other consortia).

The experience of the Yale Library, currently signing about two licenses per month for electronic information with a variety of providers, is that few of the licenses we are asked to sign are satisfactory to the Library and/or the University. Therefore, we enter into a negotiation that is characteristically complex, time-consuming, detailed, and at times unsuccessful. Although we know that many libraries are entering into license arrangements, we have found little information about what licenses have been signed and with what terms. In part, the lack of documentation arises out of the mystique of licenses (license language not infrequently forbids sharing terms of such agreements); their comparative newness as a tool for the library community; and the scary fact that librarians do not always read carefully what they sign -- they may not realize they have the power to change the terms of a license or they may not know how to go about doing so. The library literature offers a few general articles about this activity, and the most reliable and up to date help to be had is from a handful of colleagues, on a few specific electronic titles.

The above excerpt from the initial proposal seems worth including here, in part because our institution is now reviewing several licenses a week, and this must surely be true for many institutions in 1999. That is, back in 1996 we were accurate in identifying the need for the Project. In articulating the need for LIBLICENSE, we specifically asserted the following:

1. The library and institutional (i.e., customer) market must signal its needs strongly. Information providers themselves have begun feeling their way with brand new forms and services, and need to hear clearly from their academic customers about what business and contractual arrangements are satisfactory. A satisfactory license is a powerful vehicle for servicing readers, telling the provider what terms the library is willing to meet in order for the information to be sold. In fact, most

publishers welcome a detailed discussion of the license with their customers and are frequently willing to accommodate changes as requested.

2. Negotiating individual licenses takes a great deal of time. The closer that the information-delivering community (information providers and librarians) can come to identifying mutually acceptable standard or highly important terms, the sooner all parties can reduce the number of hours spent on the individual license enterprise.
3. Current practices cannot very well scale up. Licenses are legal agreements, and on some campuses, negotiating and signing licenses is the responsibility of General or Copyright Counsel. (In many, as at Yale, this responsibility has been delegated to a senior officer in the library.) Necessary as this level of attention to the electronic license currently is, it cannot scale up. When not just a handful, but even 10% of all library information requires a license (a prospect just around the corner) it will be critical to have in place a well-informed base of professional and managerial staff who, in fact, can negotiate and take license agreements close to conclusion. And it is necessary to reduce, through developing clear positions and mutual understandings, the number of contentious sections or terms contained in licenses.
4. The stakes are high and precedents matter. A current school of thought says the visibility of specific, constitutionally-based provisions of the U.S. Copyright Act, which offer information seekers, library users, and libraries themselves a number of important rights to copy and share information, are going to fade in an increasingly contract-dominated business climate. According to this rationale, the contract, not copyright, will drive transactions between information distributors and users. This vision of the contract's pre-eminence is in many ways compelling and sensible, but in others it is challenging and perhaps dangerous to a library's mission to foster wide access to information wherever possible. But if those in libraries do our work wisely and well, it is possible to reintroduce much of the access-enabling language of copyright law into electronic information licenses.

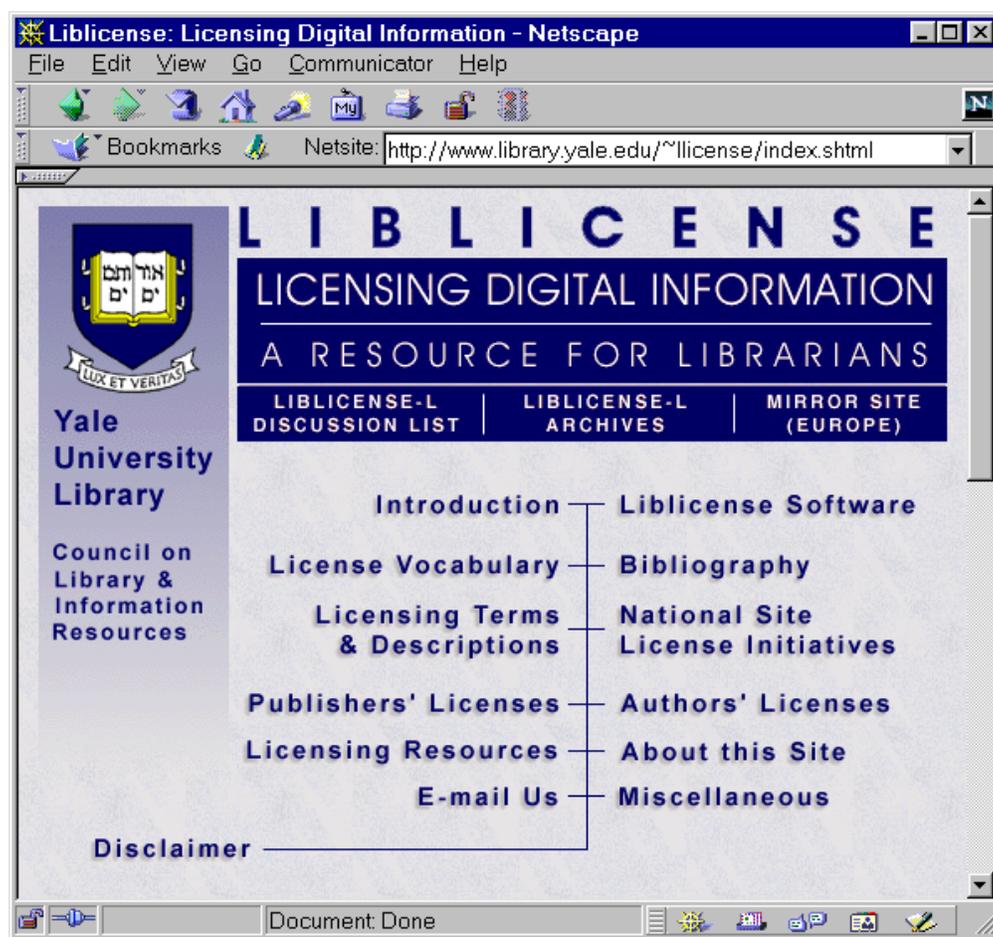
In developing LIBLICENSE, we were aware of and admired the significant work that had gone into the Coalition for Networked Information's (CNI) READI Project (<http://www.cni.org/projects/READI/guide/>). READI had attempted to consider equally the needs of all types of information providers and vendors, as well as of the customer institutions, and to resolve differences in perspective among them. LIBLICENSE chose a different emphasis: the Project was intended to create a set of policy, educational, and consumer tools that would first and foremost support librarians and educators in their licensing of electronic content. The resource was imagined to be of use to many other sectors as well, but the first emphasis was on information for libraries.

## **What LIBLICENSE Currently Delivers**

The educational web site or tool offers the following (See [Figure 1](#)):

- Standard license terms and definitions.
- Expanded lists of terms placed into specific contexts with recommendations for language to use and language that should be avoided.
- A bibliography of licensing articles, with hotlinks wherever these are available on the Web.

- A list of links to other web sites related to licensing.
- A small, new section on authors' licenses, as increasingly we sense that authors are licensing -- rather than transferring copyright to -- publishers.
- A fledgling section called "national site licenses", whose aim is to take the reader not only to model licenses developed by national groups but also by consortia, associations, vendors and the like.
- Ability to search everything on the site.
- The FAQ to, and downloadable version of, the actual LIBLICENSE software for creating one's own license.
- The site allows the reader to subscribe to the moderated liblicense-l list and to fully search the archives of the discussion group, which now number some 1400 messages over 2.5 years.



**Figure 1. LIBLICENSE home page.**

A few more words about the software are in order. This software is the most innovative feature of the LIBLICENSE Project. Having seen the benefits of the educational site and discussion list, we proposed to CLIR that it was possible to further "de-mystify" electronic resources licensing by enabling customers as well as content owners to create their own license, rather than needing to always rely on attorneys to do this work (See [Figure 2](#)). We suggested this because of our sense that the information distributors and library communities had made great strides in mutual understanding, improved license language, and in their ability to work together in negotiating licenses. The time seemed

right to try to naturalize these new understandings by developing a software for creating legal contracts, much as does software for writing wills or creating tenancy agreements.



**Figure 2. LIBLICENSE opening screen with options.**

CLIR responded boldly, and our legal consultant developed an ingenious and, at the same time, practical program. It runs on Windows 95+, 98, and NT operating systems and walks the user through the creation of a license. Step by step, the software raises issues, provides legally balanced language, and gives the user a chance to select precise terms and conditions (See [Figure 3.](#)) The effect is to "walk through" the issues that can arise during a contract creation or negotiation, giving the user assistance in making informed choices. The underlying perspective in the software, as in the web site as a whole, is that of a librarian or educator looking to make the best deal for his or her readers. At the same time, we have been attentive at every turn to the needs of content providers. In fact, long and diligent work with many publishers has made it possible to create a resource that is not biased or one-sided.

Licensor	Licensee	Date
License Fees	Authorized Users	Authorized Uses
Signatures	Appendices	
Disputes	Licensor Notice	Licensee Notice
Indemnities	Assignment	Governing Law
Herpetual Access	Warranties	Limitations
Term	Renewal	Material Breach
Use Restrictions	Licensor Part	Licensee Part
Exclusive	Licensed Material	Access Means

**Figure 3. LIBLICENSE License profiler screen.**

## The Creators

By excellent good fortune, the services of an experienced contract attorney, Rodney Stenlake, Esq., proved to be available at Yale. Mr. Stenlake had left a commercial contract practice in New York City to return to university for additional courses in the Law School. He brought his keen legal and technical skills, experience, and talent to bear throughout the Project and remains active in it. Mr. Stenlake provided most of the legal analysis for the project, and he developed the concept and implementation for the downloadable software. The Project was also blessed by the contributions of a talented Web designer, Alex Edelman, then an undergraduate web-wizard at the University of Pennsylvania, now a senior Web developer for Amazon.com. Mr. Edelman continues to proffer advice and help as called upon. ENSSIB, the leading school of Library and Information Science in France, offered to host a European mirror site.

For all of us, the LIBLICENSE project surpassed expectations and it continues to provide many, many satisfactions: as we receive and respond to inquiries through the Web site's feedback form; as we reply affirmatively to requests from various library and educational organizations to use the materials in workshop or classroom settings; and as various libraries and publishers have told us that they have used the software in developing their own contracts. The greatest reward is to create a work that is well used and meets important needs. We have been so rewarded.

## Future

The last few months have seen a growing emphasis in the information and library communities for simplifying and standardizing the work of licensing. For example, five journal subscription agencies have sponsored the creation of four model electronic resources licenses, and several university libraries and consortia have gone beyond statements of principle to develop checklists of licensing desiderata to present to their information suppliers. A group of librarians who have been meeting under the auspices

of CLIR (and earlier with the Professional and Scholarly Publishing Section of the Association of American Publishers) are crafting a proposed model or standard academic library license built upon the LIBLICENSE software. Indeed, it seems that as the number of electronic information resources continues to grow, the various stake holders are together finding ways to make licensing work well. Recently, the electronic information scene has been rendered both more complicated and more effective with the entry of literally hundreds of library consortia worldwide into the negotiating arena. (To view the web site of the International Coalition of Library Consortia, ICOLC, see: <<http://www.library.yale.edu/consortia>>).

In the end, what the LIBLICENSE Project can do, and what it does best, is inform. The conversations that must happen are ultimately held between librarians or educators and publishers or information providers. No process or software or business idea will sustain itself in this new environment unless the legitimate needs of users and producers are heard and answered. What we have learned through LIBLICENSE, and in the negotiating fray in the last several years, is that licensing, thoughtfully approached, can be an outstanding arena for identifying very diverse needs and for bringing together the parties to craft resolution to difficult issues. It can be argued that in some ways the information community gains advantages from working in the licensing environment, beyond those in the print world where take-it-or-leave-it pricing was governed by a copyright regime. Copyright and sale are far from obsolete -- in fact strong copyright law is needed as a foundation for effective licensing -- but licenses can offer new modes and opportunities to do our fundamental jobs better and thus assure the survival and prosperity of the scholarly and scientific publishing and reading communities.

Copyright © 1999 Ann Okerson

[Top](#) | [Contents](#)  
[Search](#) | [Author Index](#) | [Title Index](#) | [Monthly Issues](#)  
[Previous Story](#) | [In Brief](#)  
[Home](#) | [E-mail the Editor](#)

[D-Lib Magazine Access Terms and Conditions](#)

[DOI](#): 10.1045/september99-okerson