What’s up with licensing and libraries?

An overview of issues surrounding copyright, licensing and the electronic resources that we provide through our libraries.
Agenda

• Context
  – Examples of controversial licenses
  – Buying vs. Licensing and the overlapping purpose of Copyright law and Libraries
  – Technologically enforced license terms

• How can libraries cope and thrive in a world of licensing?
  – Consortial licensing
  – Open Access
The AUCC/Access Copyright Model Licence

Fair Dealing
Definition of Copy
Surveying
Requirements
Term
Indemnity

Records Retention
Subcontracting
Course Collection
Published Work
Audits
What about our electronic resources?
Harvard Business Review

• Linking, printing and downloading functionality removed for 500 of the most popular articles
• Harvard’s stance was that they are just enforcing terms that have always existed – Universities were always supposed to pay when using HBR articles for teaching purposes.

“There is a feeling of being held hostage: In order to get back the access you have enjoyed for over a decade, you have to pay these additional fees”

– Andy Spackman, Brigham Young University via the Chronicle of Higher Education
• As an addendum to our license in 2007 (on renewal):
  – “The license granted under this Agreement does not permit the Subscriber, without Factiva's express written consent, to use the Information or the attached codes in conjunction with any data mining or text mining software, or automated trend analysis application.”
Buying vs. Licensing
Ooh, Atlas shrugged.

Rumble

Rumble

You have terrible taste.

Click

Image: CC licensed via XKCD
http://xkcd.com/1049/
Mortal! I come offering a deal—

Read the sign.

"By entering this room, you agree to forfeit your own soul rather than negotiate with the mortal residing therein..."

Wait, you can't—

Too late.

Mephistopheles encounters the E.U.L.A.
“The purpose of copyright law was to balance the public interest in promoting the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator.”

- CCH v. LSUC
“Libraries, archives, museums and educational institutions are inextricably linked to the encouragement of learning and the dissemination of knowledge. They operate at the fulcrum of copyright's balance because they purchase works and in that way reward the creator. And they provide access to works and encourage learning, and, in doing both, serve the public interest as defined by the supreme court.”

- Victoria Owen, Who Safeguards the Public Interest in Copyright in Canada
“In serving the public interest in copyright, the exceptions and limitations to exclusive rights are critical to providing access to information to the public, supporting learning and research, promoting the free flow of information, preserving cultural heritage and encouraging free expression.”

- Victoria Owen, Who Safeguards the Public Interest in Copyright in Canada
“We face an information divide heaped on top of a digital divide, and the creation of classes of users driven by licensing terms. Will licensing and contract supplant the role of copyright in governing access to information in our nations libraries?”

- James Neal, The Copyright Axis of Evil
The Library Action Agenda on Copyright

• Effectively negotiate licences to achieve terms that advance and not erode fair [dealing] and exceptions
• Use their economic clout to influence the information marketplace
• Actively promote open models of information access and the creation of a commons for scholarly, educational and creative works

- James Neal, The Copyright Axis of Evil
Technical Protection Measures

“By embedding controls in the products, providers can prevent use that is non infringing under copyright law as well as enforce restrictions that reach far beyond the rights covered in the copyright law.”

- James Neal, The Copyright Axis of Evil
Technology enforced license terms

- Enforcement of terms using technology
  - Access, printing, downloads etc.
- Does making some use impossible re-define how we deal with material? What does it do to how individuals think about copyright?

“although the Act now largely prohibits the breaking of digital locks, a well negotiated license could nonetheless prohibit restrictive digital locks or permit circumvention in certain circumstances”

- Chabriol Colebatch, Pick your Digital Lock Battle
How are libraries coping in a world of licensing?

Working together

Promoting and supporting Open Access Publishing
Consortial Licensing
Library Consortium

• A group of libraries that work together to achieve common goals:
  – Reducing costs,
  – Negotiating favourable terms,
  – Sharing expertise, advocacy, etc.

• In Canada, there are a wide variety of consortium, which include the CRKN, OCUL and the OCLS.
The Canadian Research Knowledge Network (CRKN) is a partnership of Canadian universities dedicated to expanding digital content for the academic research enterprise in Canada. Through the coordinated leadership of librarians, researchers, and administrators, CRKN undertakes large-scale content acquisition and licensing initiatives in order to build knowledge infrastructure and research capacity in Canada’s universities. University libraries are the drivers of CRKN’s initiatives, and play a primary role in leveraging expertise and resources for the benefit of Canada’s scholarly research community.
• 98% of revenues go towards content licenses
• Significant **cost savings** over institution-by-institution licensing
  – Have secured $869 million of content since inception,
  – If the same content was acquired on an institution-by-institution basis, it is estimated to have cost $2.48 billion
• **Not just cost savings.** Group negotiations can also result in much improved access provisions for users than standard commercial licenses
CRKN Model Licence and Copyright

- Section 3: Usage rights includes 3.3: Nothing in this agreement shall in any way limit the ability of the consortium, Authorized Users and Walk-in Users to engage in or conduct any activity that would not constitute an infringement under Canadian copyright laws.
- Section 4.1: Inter-library loan
- Section 5.1: Course Packs and Electronic Reserve
Model licence deviations

• About 40 deviations from the standard license
• 5 agreements do not include clause 3.3 (the Copyright Law clause)
• 13 agreements that include either an amended ILL clause or omit the clause entirely
• 12 agreements that include either an amended clause 5.1 or omit the clause entirely (Course Reserve)
“OCUL is a consortium of Ontario’s 21 university libraries. Our strength lies in our commitment to work together to maximize our collective expertise and resources. We enhance information services in Ontario and beyond through collective purchasing and shared digital information infrastructure, collaborative planning, advocacy, assessment, research, partnerships, communications and professional development.”
Grant of Licence: “Licensor hereby grants to the Licensee the nonexclusive and non-transferable right, to permit Authorized Users to access the Licensed Materials via a Secure Network and using the access methods specified in Schedule 1 for the purposes of personal research, teaching, private study, and administrative use associated with the normal practices and activities of the Licensee consistent with the fair dealing principles of Canadian copyright law and comparable principles of international copyright law, subject to the terms and conditions of this License.”

Usage rights include 3.6 (Course-Packs/Electronic Reserve), 3.7 (Electronic Learning Environments), 3.10 (Scholarly Sharing) and 3.11 (Inter-Library Loan)
The Ontario Colleges Library Service (OCLS) was established early in 2009 as a non-profit corporation to provide a suite of core and opt-in services to the libraries / learning resource centres of Ontario’s 24 publicly-funded colleges of Applied Arts and Technology.

On behalf of the college libraries, OCLS negotiates licensing terms and pricing with vendors, arranges trials for new resources, and facilitates subscription renewals.
Copyright in Model License

• Model licence (under development) includes clauses similar to those in the CRKN licence – including ILL, Fair Dealing, Course Packs, E-reserves and electronic learning environments
Why is Open Access important from a licensing perspective?

The subscription model undermines one of the primary purposes of the library.

Open Access can help.

Part of a licensing strategy should be actively promoting open models of information access and the creation of a commons for scholarly, educational and creative works.
Why Open Access?

• Libraries need to provide both strong physical collections and access to resources beyond those physical collections.

• Libraries should do their best to have as strong as permanent a collection as possible.

• Libraries should do their best to acquire, organize and secure long-term access to the things that make us a civilization, the thinking, knowledge and wisdom.

• For libraries, journals (particularly Science, Technology Engineering and Medicine journals) cost too much money and the prices are increasing at a far too rapid rate for libraries to sustain the level of access that they require.
How are we to ensure the university’s contribution to a fairer world, if access to the research it produces about the world is itself a source of inequality?

“if the total profit from Elsevier and Lexis-Nexis is added together and converted to US dollars, the total is $2,075 million. Divided by the estimated worldwide scholarly article output of 1.5 million articles per year (Bjork et al, 2008), this comes out to $1,383 U.S. ”

- Heather Morrison, Poetic Economics

This figure is very close to the $1350 article fee charged by PLoS for PloS ONE, meaning that “the profits of this one company alone could fund a global fully Open Access scholarly publishing system.”
Tri-Agency Open Access Policy

• Draft policy requires that funded publications be OA (Green or Gold).

• “Canadian open access may also soon hit its tipping point if the three federal research granting institutions - the Canadian Institutes of Health Research, the Social Sciences and Humanities Research Council of Canada, and the Natural Sciences and Engineering Research Council of Canada - follow through with a proposed open access mandate.” – Michael Geist
Strategies

• Educate our communities re: the benefits of Open Access
• Talk about the negatives: perceived high cost, quality issues predatory publishers etc.
• Encourage submission of publications to OA repositories and provide services to help faculty do this
• Author Funds? Libraries as publishers?
Questions?
References and Resources

• Articles

• Books (freely available) on Open Access
  – Peter Super, Open Access: [http://mitpress.mit.edu/books/open-access](http://mitpress.mit.edu/books/open-access)

• Blog Posts
  – Michael Geist, Canada May be Nearing Open Access “Tipping Point”: [http://www.michaelgeist.ca/content/view/688/135/](http://www.michaelgeist.ca/content/view/688/135/)

• Websites
  – CRKN: [http://crkn.ca](http://crkn.ca)
  – OCUL: [http://www.ocul.on.ca](http://www.ocul.on.ca)
  – OCLS: [http://www.ocls.ca/](http://www.ocls.ca/)