

Building a Ladder to Access

Amie D. Freeman, Elyssa M. Gould and
Jennifer A. Mezick

Abstract

The University of Tennessee (UT) Libraries and the University of South Carolina (USC) Libraries drafted documents to guide licensing practices during 2020 and 2021. In 2021, the Association of Southeastern Research Libraries (ASERL) developed licensing principles for its members, including UT and USC. With the principles completed, both institutions moved on to implementation in 2022. This paper outlines the steps taken to develop licensing principles at UT, USC, and ASERL, and discusses plans to incorporate these principles into regular negotiations and licensing agreements at UT and USC. Readers will learn important considerations for implementing licensing principles at their own institution and be warned about pitfalls they might encounter.

Keywords: licensing principles, access principles, licensing, negotiations

Introduction

The University of Tennessee at its Knoxville campus (UT), the University of South Carolina (USC), and the Association of Southeastern Research Libraries (ASERL) identified, codified, and developed different documents guiding library principles of access and/or licensing between the beginning of 2020 and the end of 2021. This paper shares the

unique development process at each institution as well as the plans to incorporate the different principles into regular negotiations and licensing agreements at UT and USC. In this context, the word access is used to describe library materials in the broadest sense—the ability for each library’s patrons to connect to and use the materials that library personnel spend so much time selecting, acquiring, cataloging, and maintaining. Access is especially relevant when considering the access rights that libraries have historically signed away in license agreements.

Each author had a different role in developing the principles at their institutions as well as ASERL. Amie Freeman led the Objectives for Negotiations & Licensing group at USC and also served on the ASERL Eleven drafting group, representing her role as the scholarly communication librarian. Elyssa Gould participated in drafting the Philosophy of Access at UT and served on the ASERL Eleven peer review group, representing her role as the head of acquisitions and continuing resources department. Jennifer Mezick participated in drafting the Philosophy of Access at UT and served as chairperson for the ASERL Eleven drafting group, representing her former role as the collection strategist.

USC Objectives for Negotiations and Licensing: Development Process and Timeline

Prior to developing objectives for negotiations and licensing, the USC Libraries closely followed the publication announcements of principles from other institutions and consortia with interest. The USC Libraries determined they would benefit from having basic objectives in place when negotiating and forming agreements with vendors and publishers.

In late fall of 2020, a small group of USC librarians met with the goal of drafting a best practices document. Four individuals were involved: the scholarly communication librarian, the head of collection

development, the collections assessment librarian, and the head of acquisitions. Before setting specific goals, the working group became familiar with resources that were already available. One group member compiled and examined frequent and unique offers from publishers and vendors. Another was responsible for attending and reviewing information from a series of meetings on the topic of journal negotiation hosted by SPARC, as well as compiling data from SPARC resources on contract libraries and pricing information.¹ The other librarians reviewed licensing best practices and objectives from other institutions.

With information compiled, the USC Libraries were prepared to determine negotiation and licensing goals. Ultimately, the group decided to align their objectives both with the mission of USC, which is to act in the best interests of South Carolina's citizens and other stakeholders by encouraging "teaching, research, creative activity, and community engagement,"² and in a way that would allow USC researchers to maximize their research impact while safeguarding their intellectual property.

The working group next arranged a series of meetings beginning with the Collection Development Team, made up of representatives across the USC Libraries, and the Liaisons Team, composed of both subject and functional liaisons. These meetings addressed the necessity of aligning the needs of both patrons and the Libraries in contracts signed with vendors. The group encouraged participants to consider not only traditional requirements of the University and Libraries, but also important elements that would not ordinarily be offered by vendors unless they were marketing a new product or reacting to demand. In these meetings, the working group shared example statements and presented a preliminary list of objectives to the teams for feedback. The group received useful feedback, such as requiring that current metadata in commercial databases be made available for discoverability purposes.

The drafting group continued to work on the modified objectives before meeting with the associate deans of the USC Libraries for

additional feedback. The first full draft was completed and presented to the entirety of the Libraries in June 2021 in an open meeting. During this meeting, significant support was expressed for pursuing the objectives' initiatives. Once library-wide suggestions were incorporated into the draft, it was presented to the associate deans and dean for approval before it was finalized and published on the Libraries' website and institutional repository in August 2021.³

USC: Objectives for Negotiations and Licensing

The USC Libraries intentionally kept the final objectives document brief and clear, with a very short introduction that highlights the primary purpose: to prioritize arrangements with publishers and vendors that align with the missions of USC and the Libraries. Within, four principles are defined. First, prices—whether for content or author fees—should be reasonable, sustainable, and transparent. Second, that restrictions be removed from using content, for example, by limiting digital rights management, providing digital access to authorized users, and granting copyright exceptions without additional restrictions. Third, content providers should grant the Libraries access or permission to collect usage statistics that adhere to the SUSHI protocol, COUNTER Code of Practice standards, and other community-endorsed equivalents. Finally, the document includes a provision that the Libraries will not accept non-disclosure agreements, confidentiality clauses, or other barriers to transparent pricing and terms.

UT Libraries Philosophy of Access to Research, Scholarship, and Cultural Heritage: Development Process and Timeline

The process of developing the philosophy of access framework at UT began in the fall of 2020. This may seem like an odd time because of the COVID-19 global pandemic and remote work, but the UT Libraries

were trying to take advantage of the university administration's enthusiasm as well as align the philosophy of access framework with the very urgent need to save money. Identifying, naming, and communicating values around access seemed like a great place to start.

UT Libraries' senior associate dean assembled a team of about ten librarians plus a consultant to perform and coordinate the work of creating a philosophy of access framework. This group needed to work from the Knoxville campus's unique perspective as a land-grant institution, meaning that the university has a responsibility to educate the citizens of the state of Tennessee. Originally land-grant institutions taught specific subjects like agriculture, science, and engineering, but UT's modern definition means that the institution is educating broadly as well as sharing the results of the research conducted by faculty and staff at UT. Overall, including implementation, the work took over a year to complete.

In the fall of 2020, UT Libraries' consultant held two library-wide workshops and one subject librarian-specific workshop on Open Access. The goal was to begin the initial work of gathering internal perspectives on the meaning of access as it applies to the UT Libraries and the UT population. In January 2021, the 10-member team began developing the philosophy of access framework in earnest. A Vocabulary group analyzed current language and terminology used on campus. A Principles group drafted the principles to guide negotiations with vendors and publishers, using the information gathered at the fall 2020 workshops. The results formed a draft philosophy of access document that included broad tenets as well as specific principles.

In March 2021, UT began operating focus groups with key stakeholders to get feedback on the draft. Participants included undergraduate and graduate students from the UT Libraries' Dean's Student Advisory Council, tenure-track faculty, and tenured faculty members. These groups reviewed the philosophy of access document and much of the following discussion centered around vocabulary, especially around the word access. The group then moved on to operating multiple library-wide open meetings in April 2021. These meetings focused

on the broad tenets, but also the details of how to implement the tenets in licensing.

The focus groups and open meetings gave the group a lot of information and food for thought and resulted in a significantly revised document based on all the feedback. Additional library-wide feedback sessions were held in July 2021, and the Philosophy of Access to Research, Scholarship, and Cultural Heritage was finalized in August 2021. Implementation is still in progress as of this writing.

UT Libraries Philosophy of Access to Research, Scholarship, and Cultural Heritage: Content

By August 2021, the content of UT's Philosophy of Access included a broad statement about access tied to the specific parts of UT's mission; three main tenets of access specific to UT and a list of the points of negotiation, which is more of the internal application of the tenets.⁴ The three main tenets of access are: 1) access is central to the UT Libraries mission to cultivate, disseminate, and preserve knowledge; 2) access to collections that reflect the diversity of our state and global communities helps all of us work together to shape a more just and prosperous future; and 3) access to research, scholarship, and creative work supports UT's mission to advance the prosperity, well-being, and vitality of communities across Tennessee and around the world.

ASERL Eleven: Development Process and Timeline

In late 2020, participants of the Association of Southeastern Research Libraries' (ASERL) Big Deal Community of Practice, a group that discusses issues related to big deal packages, proposed creating principles to aid member institutions with license negotiations. ASERL is one of the largest regional research library consortia in the United States. Member libraries come from every state in the southeast and include

public and private libraries. However, ASERL is not a buying consortium and does not enter into resource agreements on behalf of its members, so the proposal to do this work was met with both interest and skepticism. Among the reasons to pursue this was the power and support of a unified voice to advocate for the same rights, especially for member institutions that lack the support, time, and expertise for the development of such principles on their own. The main concerns were the amount of time that would likely be dedicated to an end product and if the end product would demonstrate a good return for that time. Questions raised included: What needs would be met with principles created by ASERL? Is ASERL's time better spent endorsing and adopting principles from another library consortia? How will member libraries put the principles into action?

ASERL's executive director called for participants in January 2021 and the number of responses from outside the Big Deal Community of Practice demonstrated further interest in the idea. Two groups were formed, a drafting group and a review group. Librarians representing different expertise and member libraries were selected for each group. ASERL's executive director and the Community of Practice co-chairs set out goals for the group of volunteers selected to draft the licensing principles. First, the group's work needed to serve a purpose and build on the work published by other consortia and libraries rather than replicate what others had already published. Second, whatever the group produced needed to be useful to all ASERL members. Since member libraries vary, the outcomes need to be applicable to a variety of academic libraries. Third, the group's work needed to include a tool that members could use to put the principles into action.

The real work started in February 2021 with the group discussing standard library licenses and their attendant rights and business issues. Next, the group identified principles documented from other consortia and institutions. Each drafting group member was assigned one of these documents to analyze using a template that focused and streamlined the group's subsequent conversations by giving structure to compare and contrast the content and language of the many documents.

Analyzing the documents published by other groups, especially when comparing the content to the rights and business issues the drafting group hoped to address, made the group realize that the work to create a set of principles for ASERL would contribute something new and could be purposeful. The group also recognized that example licensing language would be a useful and actionable tool.

In May 2021 the group started discussing and drafting language. Each meeting centered around a single topic and started with a discussion of example principles from other consortia and institutions. If the group ended the meeting without completing draft language, they finished their tasks asynchronously. The drafting group met twice in October to review and edit the eleven principles and companion licensing language. In late October the draft document was handed off to the peer review group for comments, considerations, and questions. Their feedback resulted in minor changes for clarity. The document was approved by the Board of Directors in January 2022 and published online in February under the name *The ASERL Eleven: Recommended Principles and Terms for Electronic Resource Agreements*.⁵

ASERL Eleven: Content

The finalized document conveys ideas that relate to the core values of librarianship and provides examples of license language to achieve those ideals. There are a few principles and/or companion licensing clauses that the group did not need to draft and instead directed readers to the work of other groups. Also, not every principle has suggested license agreement language because the license language is either not applicable or universal language is not possible. “Price and Cost Transparency” is an example of license language that is not applicable because the principle is about the way vendors do business and not what the license controls. “Support for Open Access” is an example where universal license language is not possible because

the principle is about support for Open Access broadly rather than a specific model that should be followed.

Since the ASERL Eleven is publicly available on ASERL's website, there is the hope that the document will be used by vendors to save time by presenting ASERL members with acceptable terms at the beginning of a renewal or acquisition discussion. The creators also hope that the document will provide some consistency in how ASERL members and vendors discuss certain licensing terms.

Putting the Objectives into Practice at USC

The USC Libraries is in the nascent stages of implementing the principles set forth in the objectives document. The Libraries is considering seeking vendor feedback to formulate realistic expectations going into negotiations; however, USC Libraries intends to consult both the USC and the ASERL Eleven principles when negotiating new arrangements. Of particular use will be the inclusion of license agreement language in upcoming contracts.

Putting the Philosophy of Access to Research, Scholarship, and Cultural Heritage into Practice at UT

Putting the UT Libraries' Philosophy of Access and ASERL Eleven into practice at UT began in December 2021 with a day-long planning session between the scholarly communications librarian, electronic resources librarian, collection strategist, and head of acquisitions & continuing resources. The discussion focused on what was already occurring in the UT Libraries, whether through licensing, price negotiations, or best practices, and what would need to be implemented or standardized going forward.

Implementation in licensing will be a bit tricky for UT, as UT licenses most content at the UT System level via master agreements. A master agreement is a type of contract that agrees to terms and conditions

at the broad resource level. Annual renewals are processed via a binding purchase order that contains all the financial details. These agreements have several benefits: the agreements exist in perpetuity, meaning there are no annual updates; it allows for prompt renewals; and the Knoxville campus of UT performs the initial work of establishing a master agreement on behalf of all the UT System campuses. While UT's current licensing practices have efficiency and effectiveness as key benefits, establishing the Philosophy of Access and ASERL Eleven in the licenses themselves will take several years.

The head of acquisitions & continuing resources at UT shared an early draft of the Philosophy of Access at a regular UT System meeting of electronic resources librarians in Fall 2021. All UT campuses expressed support and identified specific areas of implementation. The head of acquisitions & continuing resources at UT Libraries then made an initial attempt to incorporate the principles into UT's template master agreement document and shared the new draft template with the other UT campuses and UT System Procurement in Spring 2022. Simultaneously, the UT campuses created lists of master agreements each would like to see updated first. Next, the campuses and the UT System Procurement Office must agree on the terms in the updated master agreement template; obtain approval from the UT System general counsel; and initiate changes, estimated to take at least five years due to the volume of agreements that need updating.

As part of the pre-negotiation work, UT Libraries now reviews the license to document what principles are already met from the UT Philosophy of Access and the ASERL Eleven. Principles that are not currently met are discussed and prioritized. This information is provided for further input with subject librarians and other stakeholders. The plan is to then incorporate the list of access terms desired into the negotiation process along with pricing. Providing additional access rights and/or removing clauses that contribute to poor business practices is a way vendors can provide new value to libraries and continue to justify price increases, which is particularly important in the context of struggling library budgets. While teaching faculty may not need to

fully understand the details of UT's Philosophy of Access, the results of implementing the framework need to be shared. UT is updating the library's web pages to share more clear and complete information about publishing Open Access, what discounts and waivers are available to UT faculty, and rights that are allowed or restricted for questions about common license terms, such as text and data mining.

Recommendations: Lessons and Takeaways

After undergoing the processes of developing and implementing licensing and access principles, several suggestions may help guide institutions or consortia when considering similar initiatives. Perhaps most importantly, a wide range of individuals with different roles should be included. It is essential to include diverse voices in both the planning and implementation processes and invite feedback from all areas of a library or across an institution during the development and implementation phases. By providing space for unique perspectives at every step, newly developed principles will undoubtedly be more comprehensive and, ultimately, more effective when implemented.

As part of this process, though, it is necessary to remember that stakeholders' levels of knowledge may vary significantly. During conversations, be prepared to explain relevant terms and principles, particularly with units that are less involved in licensing on a regular basis. At UT, these conversations became, on occasion, so focused on definitions that they ultimately led into a wider discussion about terminology used to market the library externally, particularly for terms such as access. Consider how to provide training and education for those who will be speaking to faculty outside of the libraries, such as subject liaisons.

Next, during the creation of a principles document, remember that there are many existing guidelines or statements. These include useful ideas, and librarians are often happy to allow others to incorporate their work.

Finally, keep in mind that flexibility is key. While each objective may not be met in every negotiation, prioritizing objectives based on specific situations will allow institutions and consortia to benefit from the creation and implementation of access and licensing principles. The authors hope that the sharing of experiences is helpful in considering how to go about writing access and/or licensing principles at an institution.

Contributor Notes

Amie D. Freeman is Scholarly Communication and Open Initiatives Librarian, University of South Carolina, Columbia, South Carolina.

Elyssa M. Gould is Head, Acquisitions and Continuing Resources, University of Tennessee, Knoxville, Tennessee.

Jennifer A. Mezick is Head, Assessment Programs and Collection Strategy, University of Tennessee, Knoxville, Tennessee.

Notes

- 1 SPARC is an acronym for the organization Scholarly Publishing and Academic Resources Coalition. <https://sparcopen.org/who-we-are/>.
- 2 University of South Carolina, "Our Mission," (Columbia, SC), accessed November 29, 2022, https://sc.edu/about/south-carolina-at-a-glance/our_mission.php.
- 3 University of South Carolina Libraries, "University Libraries Objectives for Negotiations and Licensing," (Columbia, SC), accessed November 29, 2022, https://sc.edu/about/offices_and_divisions/university_libraries/about/policies/negotiations_licensing.php.
- 4 University of Tennessee Libraries, "UT Libraries Philosophy of Access to Research, Scholarship, and Cultural Heritage," (Knoxville, TN), accessed November 19, 2022, <https://volumes.lib.utk.edu/wp-content/uploads/2022/07/Access-Principles.pdf>.
- 5 Association of Southeastern Research Libraries, "The ASERL Eleven: Recommended Principles and Terms for Electronic Resource Agreements," accessed November 19, 2022. http://www.aserl.org/wp-content/uploads/2022/02/2022-02_ASERL_Licensing_Principles_v1-0.pdf.