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TIPS

Licensing Business Data for Academia: Challenges and Opportunities

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Column Introduction In a previous Tips article, Breezy Silver provided some tips and tricks to help those new to database/vendor license negotiation and management. Since there are always ongoing questions, concerns, and changes to licensing business data for various use cases within academia, Kelly LaVoice and Erin Wachowicz continue this conversation and provide additional challenges and guidance that will help academic librarians work with commercial vendors and their institutions' constituents on this complex topic. *Ryan Splenda and Eve Wider, Column Editors*

Collection development challenges come in each stage of the procurement process; from content coverage to pricing, librarians work to identify and acquire optimal collections for their constituents. An increasingly intricate area within collection development is licensing. A license agreement between a publisher and client outlines the rights of both the owner and client when providing access to a product or service for a set period of time. The document will also include details on what both parties can and cannot do and the compensation that will be exchanged. It is common practice for subscribers to suggest changes to a standard agreement, working alongside a vendor to ensure a final contract protects the rights and interests of both parties. Without a formal background in contract law, librarians may find license agreements intimidating.

The level to which a subject librarian is responsible for negotiating the terms of a license varies by institution. While some librarians may work with colleagues within their library systems, such as an e-resources librarian or acquisitions specialist, others may have direct responsibilities for negotiating with vendors during this part of the acquisition process. Some librarians work directly with a Business School to pursue subscriptions and do not have a team within the library to advise on the process. A library liaison may also be asked to assist a faculty member with acquiring data for a research project. Regardless of who is funding the data, the librarian can play a role in licensing by utilizing their unique expertise in research processes. It is increasingly vital for business librarians to have a solid understanding of licenses and to feel confident negotiating changes on behalf of their institution.

In 2019, our colleague Breezy Silver published an informative introduction for librarians new to licensing content. The article covers key elements of licenses, including clauses about permitted users, access methods, term lengths, indemnification clauses, jurisdiction, accessibility, and more. It is extremely helpful for anyone interested in learning more about the components of a license agreement.

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We aim to continue this conversation about licensing content by discussing specific challenges when working with commercial vendors. For many business and financial data vendors, academia is not their primary market. Contracts are designed for commercial use by non-academic institutions. We cannot overstate the importance of this, as the logic behind many of the challenging clauses in these license agreements ultimately are rooted in concerns over lost revenue. Many of these terms are not typically found in other library licenses and can be difficult for even the most seasoned acquisitions librarians. A business librarian, working alongside acquisitions colleagues, University General Counsel, and procurement officers, can provide a valuable perspective that can enhance negotiations.

First, we will highlight some common obstacles librarians encounter when licensing business content. We will explain why these circumstances can be difficult for teaching and research and why they may create technical, financial, and administrative burdens. In most cases, these challenges will impact anyone working within academia, whether licensing for the library system, individual faculty members, or an entire academic department. After outlining why these clauses can be problematic for our user communities, we will present strategies for negotiating changes to these clauses. We will also emphasize the importance of developing networks of colleagues working through the same challenges. Finally, we will share tips for having difficult conversations with stakeholders in your institution when negotiations do not go your way.

Challenges

Modes of Access.

A data provider may offer multiple products that provide the same content but cater to different research needs. While some institutions prefer a robust user interface for searching, others require unlimited downloading and access points, including API access, to ensure the content is usable for research. Pricing can vary significantly between different delivery methods. Some vendors offer more than one access point for a set cost; others may charge separately to access their data from different delivery platforms. Justifying added costs for paying for content already available in a new format can be challenging for budget managers.

IP address authentication is a preferred method of access in academic libraries. This streamlines workflows by allowing users to authenticate into University web pages using an existing set of credentials. Some vendors require users to register for their own usernames and passwords, differing from university credentials, to use their platforms. This can burden users, who may need to create several individual accounts to move between platforms. User-generated logins and passwords can potentially increase the workload for library staff. Examples of this include manually approving access requests or regularly reviewing accounts.

An additional challenge may be the work involved in setting up data that needs to be delivered via a file transfer protocol (FTP). Depending on your institution, you may need to work with an IT department and other colleagues to ensure the data is delivered. You may also encounter additional fees to host and store that data. The vendor may have specific requests about the programs you will use for data analysis and storage, which can be difficult when University IT departments have their own preferred workflows and subscriptions in place.

Downloading.

Download limits are increasingly a challenge in academia. While many researchers seek large datasets for analysis, vendors may attempt to limit the amount of content clients can view and export from their platforms. A vendor may specify a set number of downloads for an individual or the institution. These limits may reset after a period of time, for example, daily or monthly. Limits may be enforced using technical features that prevent downloading more than a certain number of search results. Such limitations are problematic for researchers who want to search across large sets of records or data points to identify and analyze patterns. Some vendors may offer specialized seats or entirely different products that allow for a greater number of downloads, often associated with increases in prices. Some vendors will provide a sandbox or platform environment that enables a researcher to query large datasets and identify patterns but prevent exporting data.

Limitations can be technical (the product does not have the feature needed) or legal (there is a technical capability to execute, but it is not permissible). An example of this would be data scraping. A researcher may have the expertise to use a programming language to scrape a resource for content, but a license agreement can forbid this activity. Vendors may specify where content can be downloaded--for example, the ability to use data within a proprietary API in Excel, but not SPSS or STATA. Once again, there may be no technical barrier preventing the activity. The terms of use may say the institution is liable for ensuring that the action does not occur.

Pricing by Usage Model.

Vendors utilize a variety of models to develop academic pricing. This could be based on full-time enrollment (FTE) in a university or enrollment in a business program on campus. Another model sets a base price for an initial term and increases based on usage. Usage may be defined as individual account subscriptions, clicks to a landing page, or the amount of content downloaded. The vendor may or may not be upfront with how they define this usage. Basing a price on usage makes it impossible for libraries to plan for future expenditures, which is necessary when preparing budgets. Sometimes, vendors will establish pricing based on the "retail value" of the content downloaded from a platform. This may be based on published pricing for commercial clients, internal records of actual fees paid by commercial clients, or the amount a vendor believes the content is worth. Academic clients are often given a discount, but it is not clear if this discount is universal or dependent on the size of an institution or their ability to negotiate. Once again, this pricing model is problematic for academic institutions because it is highly unpredictable.

When a vendor is eager to begin a new partnership, they may offer an introductory price. While introductory offers are often quite attractive, a lack of transparency around future pricing may result in unbudgeted price increases. Even if the price increase could be handled a library budget, some library policies prohibit product renewals if an increase exceeds a certain percentage.

Audits.

Audit clauses give the vendor the right to physically come to campus or inspect the virtual records of the institution to verify that the client is complying with the terms of the license. In some clauses, this may be mentioned as something the vendor could do if the client ends the subscription to ensure any records of content downloaded have been destroyed. Some vendors will include a specific amount of time before an inspection, such as providing 48 hours' notice before a site visit. This can be challenging when a platform allows users to have individual accounts and export data. Data audit clauses present difficulties for platforms that use IP authentication instead of personal accounts.

In most cases, IP authentication does not provide a digital trail that allows an accurate record of every data set downloaded by every user. Additionally, your institution may stipulate that an audit could only be conducted with specific university personnel present, creating workflow and staffing problems. An audit can also occur virtually, which presents an entirely separate set of challenges for maintaining a secure IT environment when sharing data and access to university systems with an outside party.

Publication Limitations.

A vendor may ask a researcher to submit an abstract for any potential research project or paper they intend to publish using the vendor's data. They may also request that clients provide a complete draft of any written work for approval before they can submit the document to a journal or publisher. Some vendors contend that approval clauses are used to ensure the final piece is compliant with their license. They will often list specific examples of the type of elements they would review. The vendor may request changes, attempt to limit the amount of data shared in the paper, or prohibit anything the vendor decides could damage their own reputation or any third-party data providers they work with. In some scenarios, a vendor may even request the client complete a second license for using their data in a publication. This may also require the client to pay additional fees.

Publication clauses are exceptionally challenging for libraries and other academic subscribers to manage. They raise questions about censorship and academic freedom. Additionally, librarians and license administrators may be unaware of every researcher utilizing a dataset at their institution. Even if a visual prompt stating this clause appeared each time a user accessed the content, there is no guarantee that the researcher will abide by these terms. An expectation that libraries are intimately aware of all research projects and author partnerships is unrealistic. A researcher may spend a significant amount of time creating a work that the vendor deems unacceptable for publication without substantial changes. Another potential complication arises when a journal requires authors to share data as part of the submission process. If a data provider is unwilling to allow data sharing, the future of the paper may be in jeopardy.

Data Sharing.

A license will outline the scope of authorized users to a product. This may be an individual at your institution, individuals with academic appointments, or users within a specific department. This becomes a challenge when a researcher wants to partner with a co-author not in the defined user group to use the subscription for a research project. A vendor may allow a co-author access if they sign an additional license agreement, which may or may not require an additional fee.

An inherent challenge with data sharing limitations is that such limits are generally challenging to enforce. Monitoring platforms that allow for data to be exported can be cumbersome and, in some cases, impossible. Once data has been exported, a library or licensee cannot monitor where the data is being shared and stored.

Commercial Use.

Licensing business content for academia creates additional complexities when the boundaries between academic and commercial use are blurry in curricular and co-curricular partnerships. For example, a license might state that content may be used for academic research and educational purposes

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but explicitly state that commercial use is not permitted. This could include prohibiting the use of licensed data to make investment decisions or explicitly stating that market research reports may not be utilized by entrepreneurs or those working with for-profit businesses. A license agreement for an academic client might specifically add that the product may not be used by students during internships. Terms of use may also require limited access when academic courses are not in session.

This clause is particularly challenging due to the nature of co-curricular programming in academic business programs. Students are often enrolled in credit-bearing courses where they work with local businesses to solve real-life business problems. Suppose licensed content is being used by a student to complete an assignment and used to analyze a situation and shape their recommendation and not being shared in any format directly with the commercial business. An academic course on entrepreneurship may lead to a future business venture. Are these students abiding by the license? Additionally, academic offices may be working directly on entrepreneurial pursuits, including tech transfer offices or alumni and development groups. When a campus community member has multiple roles, such as a faculty member and advisor to an entrepreneurship center, we cannot limit their access to research content. It is ultimately up to the individual to ensure they recognize what resources can be used for their own instruction and scholarship, but not for profit-focused ventures. As previously mentioned, if a product allows content to be downloaded, an institution is limited in the measures it can take to try to ensure content is not being shared with academic community members working on commercial projects.

Auto-Renewal Clauses.

A vendor may structure a license so that the contract automatically renews if they are not notified of the intent to cancel within a specific timeframe. A frequently cited example seen in contracts stipulates that a cancellation notice should occur 90 days before the renewal date, but this is by no means the only option. These clauses often present a problem when a researcher may only have the funding for a one-year subscription to a particular tool. Keeping diligent records is essential for ensuring the vendor receives written notification of intent to cancel within this timeframe. However, this can be challenging with staffing changes and incomplete internal records systems.

Another consideration: auto-renewal clauses do not take into account changes in coverage, terms, and pricing. An institution may not have the interest to renew if certain content is removed from the subscription or available access points and download limits are altered.

Usage Statistics.

Many traditional library vendors provide usage statistics that are COUNTER-compliant, which allows for valuable comparisons of usage among library subscriptions. However, most vendors that business libraries work with do not. A license may or may not state that the vendor must share usage statistics with the client a certain number of times per year, in a specific format. Many vendors prepare statistics that they believe demonstrate the value of their products: for example, the "retail value" of the reports downloaded by all university users. While vendors find this valuable, libraries often want more consistent statistics to allow us to compare usage across platforms and make meaningful collections decisions. This could include how many users visited the database or how many articles were downloaded. Without a uniform method of usage collection, it can be challenging to compare resources for future collection development decisions. A comparison may have to be done manually, adding a significant time burden to staff involved in collection development processes.

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Moving Forward: Strategies and Considerations

The challenges we briefly outlined above are complex; there is no one-size-fits-all solution to negotiating these issues with vendors. Your institution's tolerance for risk-taking may significantly impact its approach to each of these considerations. Context matters: working through a license on behalf of an individual researcher for a one-year project is different from negotiating a campus-wide subscription you intend to continually renew. We recommend the following tips for preparing to be a part of these workflows.

Tip 1: *Do not assume the parties interested in the content will read the license or understand the impact of every condition in the license.* Workflows may vary by institution, but it is possible that a researcher requests content, and a third party in the library or business school handles the license and sets up access. As a formal liaison to a faculty member or part of a library unit focused on procurement, your role is to ensure the researchers requesting the content understand the terms of use.

If a researcher has the funds to acquire data, they may not realize that other roadblocks to the acquisition exist. You may want to start by asking the original data requester and/or researchers to meet with you and explain the scope of their project. Ask about the project's duration, if co-authors or research assistants will be involved, and if they have a plan for analyzing, storing, and working with large data sets. This information is helpful to have when negotiating a complex license agreement. This context can also help if you must explain to a researcher why a license could not be successfully negotiated.

Tip 2: *Don't be afraid to bring your researcher into the negotiation process when necessary.* Ensure that they understand how the terms of the contract could impact the scope of their intended research project. In certain situations, bringing a vendor and researcher together could help negotiate a compromise on terms both parties find agreeable. A vendor may be willing to change the language in the license when they better understand a researcher's vision. For example, a request to download 40 years of data may sound threatening to a vendor from the standpoint of a potential loss of intellectual property. Allow the researcher to explain how looking at trends in historical data will allow them to make sense of current trends. Allow the researcher to explain how they will analyze the data and to what extent they would want to share any of the data in a publication. If a vendor feels comfortable with the use case, they can bring it back to their legal team and ask for changes.

The faculty members' expertise adds unique value to the process. They will have their own network of colleagues to connect with about the value of the data and any license limitations. In some circumstances, a faculty member may have relevant contextual information about transactions between the vendor and other institutions that have caused the vendor to change license terms in a more restrictive or less restrictive way. Faculty members may come together to try to negotiate through their professional organizations. Business faculty members often serve as advisors to groups or financial institutions that sell data and can potentially use this influence to encourage an organization to be flexible when working with academics.

A researcher may feel frustrated with the vendor if they are unwilling to change terms that your institution cannot accept. But by allowing them to participate in the process, they will hopefully understand that you did everything from your position in the library to advocate for changes on their behalf. The faculty member may then ask you to help them identify other potential data sources for a project. A strong relationship may form, as the faculty member understands your expertise better and views you as a partner and advocate in these areas.

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Tip 3: *We believe it is important to grow your professional networks and work closely with academic library colleagues who license similar content.* A vendor may not initially want to make concessions to your institution, but if you are aware that they made that concession for a peer institution, you have an enhanced position when negotiating. While vendors may not support clients talking amongst themselves, it is perfectly legal to do so if the agreement permits or if you are not yet a client and reviewing a license with no promise of commitment. Colleagues may also be able to share language they developed that a vendor has already approved for you to utilize during your negotiations. Depending on the type of content you usually work with, you may find library professional organizations extremely valuable. Or you may find organizations with business school employees, financial professionals, or information scientists more beneficial. As you ask colleagues for their unique perspectives, remember that you are also a valuable colleague! Your experiences with a particular sub-discipline of business, research methods, trends in scholarship, and past experiences negotiating content may in turn help a colleague who has helped you with their own unique experiences.

Some professional associations have worked together to establish set pricing for members and agreements that address the common needs of academic clients. The vendor may assign a representative to work directly with one of these groups as they would with individual clients. For example, regional groups like the Association of Southeastern Research Libraries (ASERL) and Northeast Research Libraries (NERL) or organizations like the Academic Business Library Directors (ABLD) can negotiate for transparent pricing and reasonable terms. These workflows benefit both parties. In addition to pricing transparency, these arrangements allow a group of professionals representing diverse institutions to develop a fair and agreeable set of terms for teaching and research. It also helps vendors to better understand their clients. If most academic clients are requesting the same terms, it makes sense to develop a custom academic license that can be used, saving time from renegotiating point by point with each new client.

Some peers have made significant strides fighting for transparency in terms and pricing, which allows professional networks to collaborate more easily. Public institutions may have more support from vendors in this area. For example, Cornell University Library publishes an annual list of spending by vendor (Koennecke, 2019). A project like this can be used for benchmarking, especially at institutions of a similar size with similar programs.

Tip 4: *It is critical to pay close attention to the rapidly changing information market.* An increasingly significant challenge in this area is the impact of the consolidation of business information vendors. For example, in the past few years, Mergent and Refinitiv have both been acquired by the London Stock Exchange Group (FTSE Russell, 2016; London Stock Exchange Group plc, 2022). S&P Global has merged with IHS Markit (S&P Global, 2022). Morningstar has acquired Sustainalytics (Morningstar, Inc., 2020). FactSet has acquired CUSIP Global Services (FactSet, 2022). With a shrinking landscape of potential information providers, we fear that negotiating power may be decreasing. A smaller vendor that previously offered reasonable terms may now come to clients at renewal times with significantly different license agreements and pricing models. These firms may or may not have an academic client manager who can explain academic use cases and advocate for clients. However, this also presents an opportunity; if academic clients continue to deliver the same messaging to vendors, it increases the chances of vendors considering making changes to products and licenses. Vendors must recognize that educational institutions are training the next generation of business leaders; having their platforms available at a business school ensures that future leaders know about their products. Hence, adding more academic institutions as clients is good for business.

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Conclusion

While we do not have any easy solutions to these common licensing problems, we hope this article draws attention to clauses in business resources that potentially cause concern. Since many business librarians do not have formal legal training, we believe additional professional development for understanding and negotiating licenses is critical. Librarians can use their knowledge of academic resource practices to advocate for their user communities and ensure licenses do not restrict the potential for scholarly output or put undue burdens on their institutions. The perspective of a business librarian is unique. The relationship with faculty, knowledge of business and related academic disciplines, experience with scholarly research processes, and connections to networks of peers working through the same licenses add value to an institution's licensing process.

In writing this column, our goal is to start an ongoing discussion we hope to have with colleagues and vendors alike. We look forward to continuing our collective work in these areas and increasing librarians' negotiation power.

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