

The threat to perpetual access: Licensed Electronic Resources & Open Access

Michelle Polchow Electronic Resources Librarian Presented November 17, 2020



Libraries are keepers of the scholarly record

although true in print era, it is less clear who is responsible for keeping digital scholarly record

- National Digital Platform for Libraries -a framework to understand perpetual access
 - Licensed Electronic Resources
 - Copyright Section 108 library superpowers
 - Open Access



National Digital Platform for Libraries

Institute of Museum and Library Services

National Digital Platform
Collaborative or Disconnected?

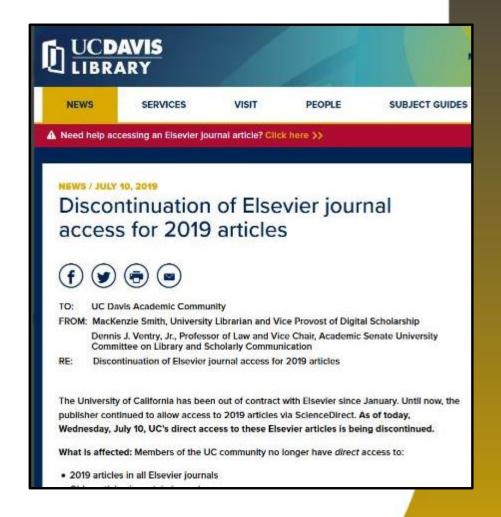
- Libraries work to solve local needs
- Simultaneously contribute to regional & national
- NDP is conceptualized as a way of thinking
- Measure US Libraries' digital capacity & capabilities
 - Software applications
 - Social and technological infrastructure
 - Staff expertise



University of California

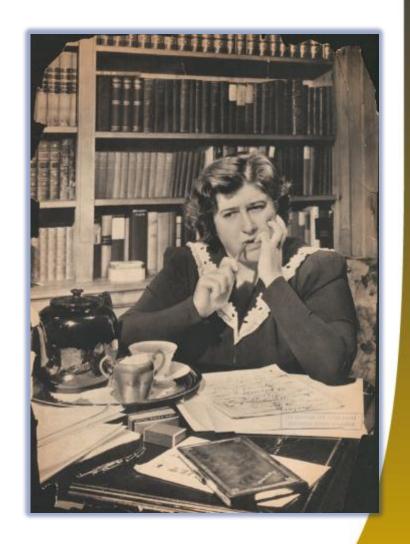
... out of contract with Elsevier

UC represents 10% of nation's scholarly publishing output - negotiations press for open access to UC research

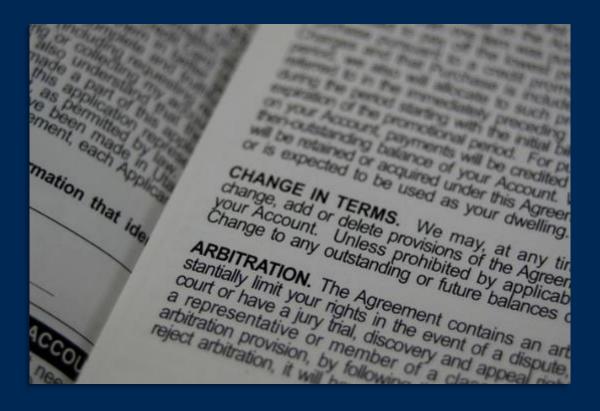




Don't worry, we have perpetual access to the backfiles...







What did the fine print say?

Clear & actionable >> Ambiguous >> Absent



$ar{Licensed} \ Electronic \ Resources$

(basics on perpetual terms)

"When libraries broaden acquisitions to include not just sales, but to also encompass licensing in their business models, the effect has far greater implications beyond acquisitions."

Tomas Lipinski, JD, LLM, PhD. Professor, Library Science Author: The Librarian's Legal Companion for Licensing Information Resources and Services License - Access (rent) vs Purchase (own)

Right to 'retain' or 'access' leased content after agreement ends?

If agree to ongoing access, will Licensor supply Licensee with archival copies, or host on-going access

Archival rights

Is this dependent on an on-going relationship between the parties?

Perpetual access- except where termination of the agreement occurs

Will Licensee become lawful owner of digital copy?

LibLicense Model

Performance Obligations

- Access survive termination of agreement
- Equivalent access after termination (UC's outcome with Elsevier)
- Licensee takes over equivalent access

Perpetual License. Notwithstanding anything else in the Agreement, Licensor grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were [accessible or **subscribed to**] during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If the Licensor's means of access is not available, the Licensee may provide substantially equivalent access to the Licensed Materials in accordance with Sections 8.2 and 8.3, below.



Source: http://liblicense.crl.edu/licensing-information/model-license/

Authorized Uses





Backup Copy.

Licensor shall provide to Licensee upon request, or Licensee may create, one (1) copy of the entire set of Licensed Materials to be maintained as a backup copy.

In the event that the Agreement is terminated,
Licensee may use the backup copy to exercise any
perpetual license rights granted in this Agreement,
including but not limited to use of the backup copy as
the archival copy as specified in Section 8, below.

Where perpetual rights have not been granted,
Licensee will destroy all backup copies within [thirty

(30) business days] of termination of this Agreement.

Source: http://liblicense.crl.edu/licensing-information/model-license/





Title List

- ☐ Dynamic nature of journals
- ☐ Varying length of subscribed content
- ☐ Flips between OA subscription
- ☐ Library's documentation



TRANSFER Code of Practice

Code of best practice for transferring & receiving publishers to minimize disrupting library access





EDINADataCentre



Source: http://blogs.edina.ac.uk/2019/04/25/entitlement-registy-webinar-recording-and-faq/



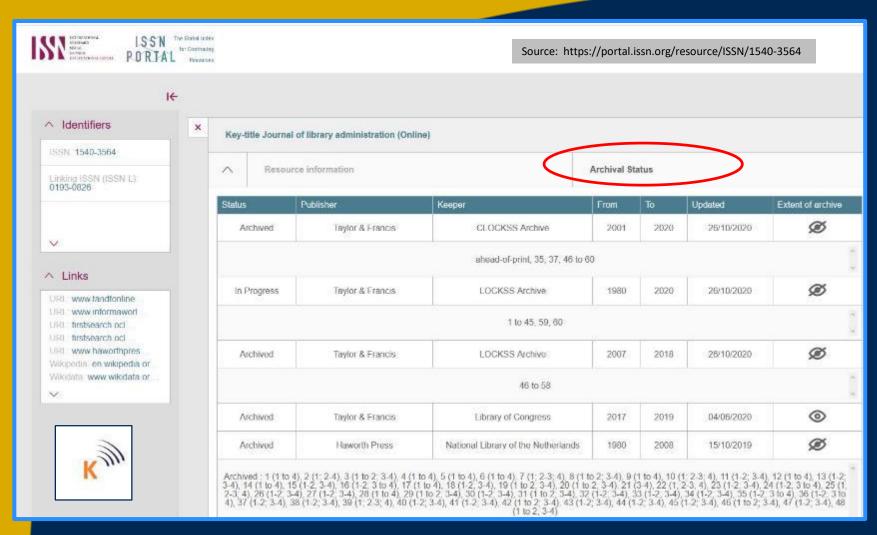
LIBLICENSE:

Use License to advocate for digital preservation

PORTICO
CLOCKSS
LOCKSS
HathiTrust
IA Scholar (alpha)

- Third Party Archiving Services. Licensor and Licensee acknowledge that either party may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise Licensee's rights under this section of the Agreement. Licensor agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. Licensee may perpetually use a third-party trusted system or collaborative archive to access or store the Licensed Materials, so long as Licensee's use is under the same terms as this Agreement.
- In the event the Licensor discontinues or changes the terms of its participation in a third-party archiving service, the Licensor shall notify the Licensee in advance, and shall in good faith seek to establish alternative arrangements for trusted archiving and perpetual access to the Licensed Materials.

Source: http://liblicense.crl.edu/licensing-information/model-license/



Keepers Registry – ISSN International Centre

Monitors 13 preservation schemes



Keepers Registry

Library action items:

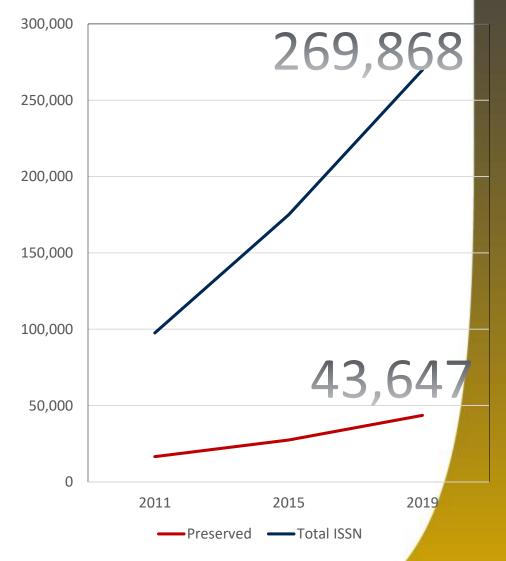
- License terms include
 3rd party preservation
- Follow-up on publisher deposits

Notes about statistics—

- Measures 13 preservation schemes &
- Not all ISSN represent scholarly titles



Total ISSN Titles vs. Preserved Titles



Source: Laakso, Mikael, Lisa Matthias, and Najko Jahn.

"Open Is Not Forever: A Study of Vanished Open Access Journals." (2020). Web.

E-Books

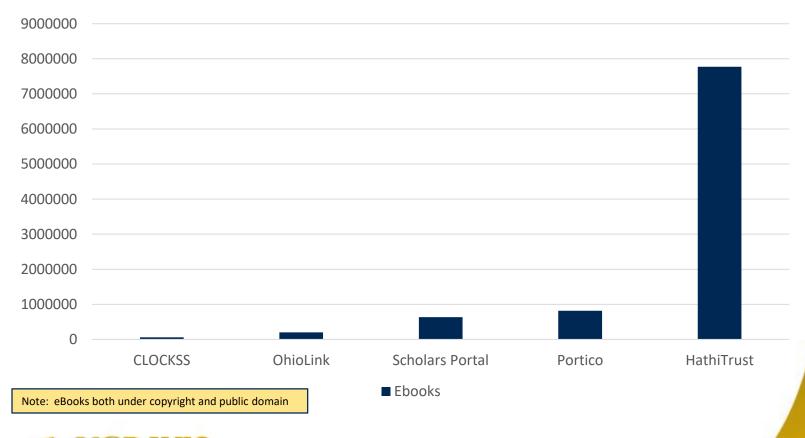
- "Owned e-books" license is critical
- Include ILL terms
 - Occam's Reader WRLC
 - VIVA e-book lending model
- Multiple hosting platforms (lots of copies = safe)
 - EBSCO
 - ProQuest
 - University Press platforms
- Consortia hosting models:
 - OhioLINK
 - Scholars Portal

Sources: Virginia's Academic Library Consortium, Whole ebook lending, https://vivalib.org/c.php?g=836990&p=6137355



Environmental Scan

eBook Preservation





Source: George Machovec (2018) Consortial Ebook Archiving Environmental Scan, Journal of Library Administration, 58:1, 81-90, DOI: 10.1080/01930826.2017.1399706



U.S. Constitution-Copyright Section 108

Section 108 of the Copyright Act permits libraries and archives to make certain uses of copyrighted materials in order to serve the public and ensure the availability of works over time.

Among other things, Section 108 provides limited exceptions for libraries and archives to make copies in specified instances for preservation, replacement and patron access.





Controlled Digital Lending by Libraries

Position Statement *

White Pa

Position Statement / Statement on Controlled Digital Lending by Libraries

Position Statement on Controlled Digital Lending

Last Updated September 2018

Introduction

This Position Statement on Controlled Digital Lending by Libraries ("Statement") offers a good faith interpretation of U.S. copyright law for American libraries considering how to perform traditional lending functions using digital technology while preserving an appropriate balance between the public benefit of such lending and the protected interests of private rights holders. This Statement only applies to in-copyright works, as public domain works may be distributed without restriction. This Statement is not intended to describe the upper limits of the fair use or other rights of libraries, bind the signatories to any legal position, or constitute legal advice. Because the following analysis is general, any library considering implementing controlled digital lending should consult a competent attorney to develop an appropriate program responsive to the specific needs of the institution and community.

Controlled Digital Lending ("CDL")

One of the most fundamental and socially beneficial functions of libraries is providing broad access to information by lending books and other materials to their communities. To lend materials more effectively, libraries can apply CDL to their collections in order to fulfill their missions. CDL techniques like those described in this Statement are designed to mirror traditional library practices permitted by copyright law.

Properly implemented, CDL enables a library to circulate a digitized title in place of a physical one in a controlled manner. Under this approach, a library may only loan simultaneously the number of copies that it has legitimately acquired, usually through purchase or donation. For example, if a library owns three copies of a title and digitizes one copy, it may use CDL to circulate one digital copy and two print, or three digital copies, or two digital copies and one print; in all cases, it could only circulate the same number of copies that it owned before digitization. Essentially, CDL must maintain an "owned to loaned" ratio. Circulation in any format is controlled so that only one user can use any given copy at a time, for a limited time. Further, CDL systems generally employ appropriate technical measures to prevent users from retaining a permanent copy or distributing additional copies.

CONTROLLED DIGITAL **LENDING**

ONE COPY = ONE USER





Local Library create your own-Copyright Section 108 Policy





EMERGENCY TEMPORARY ACCESS SERVICE



Internet Archive

Announcing a National Emergency Library to Provide Digitized Books to Students and the Public

Posted on March 24, 2020 by chrisfreeland



March 24, 2020

Vast majority of 1.4 million, 20th century titles do not have a commercially available ebooks

2.5 million public domain books



Academic Libraries Video Trust





Founded on Copyright provision for libraries

pursuant to Section 108 of the U.S. Copyright Act preservation and replacement of works in the library's collections

Repository for AudioVisual Works

- Works currently available only in the obsolete VHS format
- Cooperative digitization and online distribution channel
- Library's VHS collection or receipts for such works
- Trust is library fee based

Open Access & vanishing journals





Open is not forever



comprehensive and open archives, vanished from the web between 2000-2019, spanning all major research disciplines and geographic regions of the world. Our results raise vital concern for the integrity of the scholarly record and highlight the urgency to take collaborative action to ensure continued access and prevent the loss of more scholarly knowledge. We encourage those interested in the phenomenon of vanished journals to use

Comments: 32 pages, 5 tables, 5 figures, preprint

the public dataset for their own research.

Subjects: Digital Libraries (cs.DL)
Cite as: arXiv:2008.11933 [cs.DL]

(or arXiv:2008:11933v3 [cs.DL] for this version)

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- 176 OA journals vanish900 OA journals inactive
 - WayBack Machine insufficient



152 journals flipped from OA to Subscription



Article

The Two-Way Street of Open Access Journal Publishing: Flip It and Reverse It

Lisa Matthias 1,*0, Najko Jahn 20 and Mikael Laakso 30

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PUBLISHERS' AREA DISCOVER ISSN SERVICES SEARCH OPEN ACCESS RESOURCES KEEPERS REGISTRY

Directory of Open Access Journals (DOAJ)

CLOCKSS Internet Archive Keepers Registry



DOAJ News Service

News, updates, & developments from the Directory of Open Access Journals

DOAJ to lead a collaboration to improve the preservation of open access journals

«Previous / Next»

DOAJ (Directory of Open Access Journals) / 05/11/2020 / In development, News update, Press release

PRESS RELEASE

<u>DOAJ</u>, the <u>CLOCKSS Archive</u>, <u>Internet Archive</u>, <u>Keepers Registry</u>/ISSN International Centre and <u>Public</u> <u>Knowledge Project</u> (PKP) have agreed to partner to provide an alternative pathway for the preservation of small-scale, APC-free, Open Access journals.

The recent study, authored by M. Laakso, L. Matthias, and N. Jahn, has revived academia's concern over the disappearance of the scholarly record disseminated in Open Access (OA) journals.

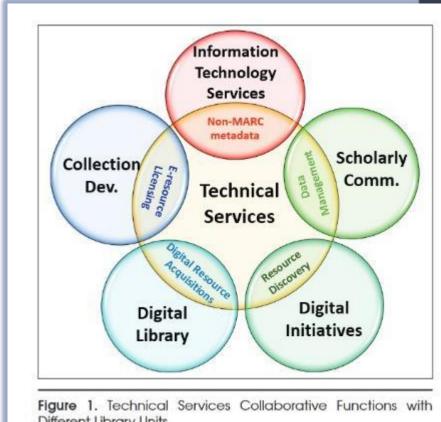


Sources:

https://blog.doaj.org/2020/11/05/doaj-to-lead-a-collaboration-to-improve-the-preservation-of-open-access-journals/https://road.issn.org/

Perpetual Access

knowledge, leadership, roles & responsibilities



Different Library Units

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National Digital Platform for Libraries



Libraries as keepers of the scholarly record



Sources: Balanced Scale by ProSymbols, LIS: Individual vs. Group by 7. Liew, Shutterstock and Library by Smalllike



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US Copyright Section 108 http://www.section108.gov/about.html

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