



License Analysis of e-Journal Perpetual Access

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ABSTRACT

In this paper we investigate the definitions of perpetual access and examine current studies on the attitudes and concerns towards perpetual access from both libraries and publishers separately. We then conduct a content analysis of 72 e-journal licenses to explore whether perpetual access clauses vary among commercial publishers and non-commercial publishers, whether clauses change over time, and whether differences exist between consortium and site licenses. Results suggest that different perpetual access clauses may be at different stages of institutionalization. Perpetual access clauses that are more institutionalized include: addressing perpetual access in license, providing perpetual access upon expiry of subscription, and specifying a location for perpetual access.

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INTRODUCTION

With the development of information technologies and the Internet, scholars are increasingly relying on licensed, rather than purchased, electronic resources (e-resources) such as e-journals and e-books. But, e-resources have affordability concerns; some economic analyses charge that publishers inflate e-resource subscription fees, charging journals “on what the market can bear” (Davis, 2003; Susman, Carter, Ropes, Gray, & The Information Access Alliance, 2003). High costs and shrinking university budgets have led some libraries to cancel e-resource licenses, raising the issue of “perpetual access” or to what extent authorized users can access previously subscribed to (but now cancelled) digital materials. Because e-resource titles typically exist on publishers’ servers, rather than library shelves, it is unclear whether or not the library can maintain access to materials after cancellation.

The Digital Library Federation (DLF) Electronic Resource Management Initiative (ERMI), developed the term “perpetual access” (we use the abbreviation “PA”) to describe the situation where a library can “permanently access the licensed materials paid for during the period of the license agreement” (Jewell et al., 2004, p 158).¹ While post cancellation access is a concern, several other factors contribute to a library’s need for PA; for example, the North East Research Libraries (NERL) (2003) consortium states that PA should be ensured for “mergers and acquisitions, insolvency, or transfers of ownership to another publisher”.

Several model licenses address PA including the [Liblicense Model License Agreement and Commentary \(2008\)](#), [Standard License Agreement: Publisher and the Regents of the University of California](#)

(2011), [University of Oregon Libraries model license \(n.d.\)](#), [TRI-College Library Consortium License Agreement for Electronic Resources \(2006\)](#), and the International Federation of Library Associations and Institutions [IFLA Licensing Principles \(2001\)](#). Model licenses commonly recommend that licenses include the following:

- Clauses stating that PA is provided under automatic termination of subscription,
- Clauses stating that PA will include access to backfiles if backfiles were part of the subscription,
- Clauses specifying a location for PA copies, and
- Clauses allowing the library to host its own PA copies.

In this paper we explore the status of PA in a sample of North American academic library licenses to see how they compare to the above recommended clauses. Our sample includes e-journal licenses from 11 publishers from the period 2000 to 2009. This paper extends e-journal licensing research reported by [Eschenfelder, Tsai, Zhu, and Stewart \(2013\)](#). In this new paper, we focus on PA clauses in licenses — an issue not covered in the earlier paper.

This paper makes several contributions to the licensing research that addresses PA. We define and track multiple PA conditions not depicted in earlier studies, we refine the methodology used in [Eschenfelder et al. \(2013\)](#) to include tracking of license silence, we track licenses over a longer time period than earlier PA studies, and we suggest characteristics of different stages of institutionalization of model PA license terms.

The study answers the following research questions:

- (1) How does a sample of academic library e-journal licenses define PA?
- (2) Do the attributes of PA in those licenses vary in terms of:
 - Different types of publishers: commercial publishers vs. non-commercial publishers?
 - Different time periods (2000–2004, and 2005–2009)?

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¹ Perpetual access is also sometimes called “permanent access” or “post-cancellation access.”

- Different types of licenses: site licenses for individual libraries compared to consortium licenses?
- (3) To what degree do license PA terms match the ideal clauses suggested by model licenses?

In our analysis we delineate seven conditions under which publishers provide PA services. These conditions range from very basic, (e.g., expiry of an e-journal subscription) to the very complicated (e.g., publisher merges or sells titles during the period of subscription). In our analysis we also outline the variation in what exactly is provided by publishers' "PA service." For example sometimes PA consists of access to backfiles, other times backfiles are not included. Finally, we attempt to make claims about to what degree aspects of PA have become "institutionalized," or become expected norms, within the scholarly publishing community. We found that for the licenses in our sample, some recommended elements of PA have become fairly institutionalized, but other recommended elements remain rarely addressed in licenses. Most licenses provided PA when a license is terminated after the expiry of the subscription period. But the majority of the licenses did not provide PA in more complex situations, such as sale of titles or insolvency of the publisher. We rank the publishers in our sample in terms of their percent concordance with model license recommended PA terms.

The paper continues by comparing PA definitions expressed by different stakeholders in the trade literature. It then summarizes previous license analysis studies about PA. The main section of the paper describes the results of our content analysis of the PA clauses from 72 licenses from 2000 to 2009. The paper concludes by considering the degree to which various aspects of PA appear institutionalized within our sample data set.

BACKGROUND AND DEFINITIONS

WHAT DOES PA MEAN?

While stakeholders tend to use one common definition for PA, the details of that definition vary in important ways. The common definition of PA refers to libraries' ability to access previously subscribed resources after subscription cancellation.² While both library and publisher stakeholders employ this basic definition, the details of their definitions may differ. One unresolved detail about PA is the *location of PA contents* (Waller & Bird, 2006). PA content could be hosted on a library's servers, a publisher might host PA content on their own servers, or they may contract hosting of PA copies to a third party or cooperative services like LOCKSS. Another unresolved issue is PA cost: Stakeholders disagree about whether PA ought to be *free or whether access fees are appropriate*. Some argue that access fees are necessary to support ongoing access to PA materials, while others argue that there should be no charge for providing PA (Beh & Smith, 2012). Another issue is the *range of conditions* (beyond termination of subscription) under which publishers will guarantee PA. It is unclear if publishers will provide PA under conditions of insolvency, acquisition or discontinuation of a title ("NERL Principles", 2003; Park, 2007; Rogers, 2009; Waller & Bird, 2006). Our analysis describes seven conditions which we observed in our sample of licenses and indicates what percent of licenses agreed to provide PA under each condition. Finally, what exactly is included in the PA is also often an unresolved question. While PA is typically seen as covering material published during the time of subscription, some argue that *backfiles* should be included if the backfiles were part of the original subscription (Stemper & Barribeau, 2006). In other cases, publishers offer bonus content as part of a subscription and it is not clear whether the bonus content is included in the PA ("Science Online", n.d.; Stemper & Barribeau, 2006).

² This is similar to the definitions from other LIS professionals and publishers (Waller & Bird, 2006; Park, 2007; Rogers, 2009), Oxford University Press (OUP) (*Perpetual Access*, n.d.) and ONIX for Publications Licenses (*ONIX-PL*, n.d.).

Finally, the distinction between PA and digital preservation/archiving is also important. PA is a right provided by contract, social norms or other means, i.e., "the right to permanently retain an electronic copy of the licensed materials" (Blackwell Publishing, 2007; Jewell et al., 2004). In contrast, digital preservation ensures that the electronic materials, regardless of access rights, stay usable.

Our findings, described later in the paper, outline the differences in how licenses treat these details about the location of PA, cost of PA, conditions under which the publisher will provide PA, and whether PA includes backfiles. Variation in these important details may lead to different expectations about what PA services include, and may complicate communication about PA within the e-resource publishing community.

LIBRARY & PUBLISHER CONCERNS ABOUT PA

Libraries have long been concerned about PA within the context of the shift to licensing and e-resources. But one area of debate is who should host PA content. Typically libraries pay publishers yearly access fees to host PA materials. But some advocates push for libraries to host their own PA copies ("library PA") out of fear publishers will not be able or willing to provide PA if titles are no longer profitable (Kenney, Entlich, Hirtle, McGovern, & Buckley, 2006; Okerson, 2000). On the other hand, the costs to libraries to host their own PA materials are substantial and not attractive (Wolf, 2009). Alternatively, publishers and libraries can contract with third-parties, like Portico, or participate in cooperatives, like LOCKSS, to ensure PA. Carr (2011) suggests that many libraries are not interested in hosting their own PA copies.

Providing PA services assists publishers in maintaining good relationships with libraries and ensuring the continuity of their electronic publications. First, by providing PA services, publishers arguably develop better relationships with their customers by meeting customer needs. For instance, Springer states that it created its PA option in response to libraries' concern about the issues ("SpringerProtocols", 2009). Second, by addressing the PA problem, publishers can help ensure the continuity of a product. For example, the Publication Manager from HighWire Press described PA as ensuring "business continuity" across publisher status changes and worst case scenarios (Mark, 2009). As one of Waller and Bird's (2006) publisher respondents explained, "stability and continuity [of the e-journals] make our lives and jobs much easier" (p. 191). But publishers also have cost concerns about PA services. Many publishers choose to work with third-parties, rather than building their own infrastructure, to provide PA in order to reduce costs (Cox, 2010).

WHAT DO WE KNOW ABOUT HOW E-JOURNAL LICENSES TREAT PA?

It is difficult to make general claims about how licenses treat PA based on the combined data from past studies because published studies have used different definitions of PA and different samples of licenses. One problem is that many studies measure PA without providing a definition of what PA means. Further, when studies do define PA, they tend to employ slightly different definitions. The samples of licenses analyzed in these studies also vary greatly in terms of the publishers included and the number of libraries included. Another complication with making general claims about PA based on the past studies is that past studies have not always specified how they treat license silence about PA. Licenses that are silent contain no language about PA. Some may interpret silence to mean "publishers do not forbid" PA, other may interpret silence to mean that publishers do not grant any PA rights (Harris Ellen, 2009). These differences make it hard to combine results across studies to make general claims about PA in contemporary e-journal licenses. Despite these difficulties, this section continues by describing prior study results.

Past studies show mixed results in terms of access fees, location of PA and silence about PA. Millett's 2001 study found just under 15% of

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