

# DRAFT

## University of California Guidelines for Licensing Digital Content

### A. Users and usage

1. A license agreement should provide access to all authorized University of California users<sup>1</sup> at all University of California sites,<sup>2</sup> as well as to on-site users of UC Libraries.
2. A license agreement should recognize and not restrict or abrogate the rights of the University of California or its user community permitted under copyright law. The University of California should make clear to the licensor those uses critical to its authorized users including, but not limited to, printing, downloading, and copying.
3. A license agreement should recognize the intellectual property rights of both the University of California and the licensor.
4. A license agreement should not hold the University of California liable for unauthorized uses of the licensed resource by its users, as long as the University of California has implemented reasonable and appropriate methods to notify its user community of use restrictions.
5. The University of California should be willing to undertake reasonable and appropriate methods to enforce the terms of access to a licensed resource.
6. A license agreement should fairly recognize those access enforcement obligations that the University of California is able to implement without unreasonable burden. Enforcement must not violate the privacy and confidentiality of authorized users.
7. The University of California should be responsible for establishing policies that create an environment in which authorized users make appropriate use of licensed resources and for carrying out due process when it appears that a use may violate the agreement.

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<sup>1</sup> Authorized users include all faculty, staff and students of the University of California and all onsite library users. Others directly served by the University, e.g. employees of UC-managed laboratories, and other research and instructional programs, K-12 teachers, and individuals in outreach programs may be included by special arrangement.

<sup>2</sup> University of California sites are defined as every campus location, physically and virtually, as well as the Office of the President and UC-affiliated hospitals.

8. A license agreement should require the licensor to give the University of California notice of any suspected or alleged license violations that come to the attention of the licensor and allow a reasonable time for the University of California to investigate and take corrective action, if appropriate.

9. A license agreement should require the licensor to defend, indemnify, and hold the University of California harmless from any action based on a claim that use of the resource in accordance with the license infringes any patent, copyright, trademark, or trade secret of any third party.

10. University of California use data should be available to UC as part of contractual provisions for a license. The routine collection of use data by either party to a license agreement should be predicated upon disclosure of such collection activities to the other party and must respect laws and institutional policies regarding confidentiality and privacy.

## **B. Functionality**

1. A license agreement should not require the use of an authentication system that is a barrier to access by authorized users. Publishers should be able to link their access control mechanisms to the University of California's authentication infrastructure; access to their products should not require individual passwords and/or user ID's.

2. The licensed content, plus any associated features and capabilities, should be accessible from all institutionally supported computing platforms and networked environments. Data formats and delivery protocols should follow current library standards and must be fully documented.

3. A license agreement should not limit the University of California's rights to enhance or reformat data (if content integrity is preserved) to make it more visible or convenient for UC users.

4. A license agreement should include service level provisions satisfactory to the University of California including provision for ongoing technical support.

5. Full text resources should provide the University of California the ability to easily and routinely create and maintain links from other bibliographic databases to the corresponding full text of digital content.

## **C. Archiving**

1. A license agreement should include permanent rights to information that has been paid for even in the event that a licensed resource is subsequently canceled or removed as well as mutually-acceptable means for ongoing access to the permanently-licensed content.
2. Since, as research institutions, the University of California and its libraries have a legitimate interest in maintaining archives and a mission to ensure archival access, a license agreement should clearly state archival responsibility.
3. When permanent use of a resource has been licensed, a license agreement should allow the University of California to copy data for the purposes of preservation and/or the creation of a usable archival copy. If a license agreement does not permit the University of California to make a usable preservation copy, a license agreement should specify who has permanent archival responsibility for the resource and under what conditions the University of California may access or refer users to the archival copy.

#### **D. General**

1. A license agreement should provide termination rights that are appropriate to each party.
2. A license agreement should not require the University of California to adhere to unspecified terms in a separate agreement between the licensor and a third party unless the terms are fully reiterated in the current license or fully disclosed and agreed to by the University of California.
3. The terms of a license should be considered fixed at the time the license is signed by both parties. If the terms are subject to change (for example, scope of coverage or method of access), the agreement should require the licensor or University of California to notify the other party in a timely and reasonable fashion of any such changes before they are implemented, and permit either party to terminate the agreement if the changes are not acceptable.

#### **E. Pricing**

1. The University of California's ability to match the needs of its academic programs, depends on publisher's willingness to unbundle the costs of print content, digital content, and access; to permit the selection of print and digital content on a title by title basis; and to allow the use or development of alternative access methods.
2. The University of California's willingness to work with publishers to explore business relationships that add value depends on pricing which reflects that added value.

3. The size (FTE or collection budget) of the University and its member campuses should not be used formulaically to calculate price levels, unless there is an understanding that subsequent pricing will be adjusted to reflect demonstrated use.

4. The University of California is willing to consider special terms in order to provide unlimited access by all qualified users to digital content from publishers who have in the past, relied heavily on individual member subscriptions for support.

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