



knowledge without boundaries

**Welcome to the
second of three
EIFL-Licensing webinars
on the
EIFL Model Licences**

What are we going to cover?

- Quick **overview** of the EIFL-Licensing Programme, why EIFL has model licences, and what the benefits are
- Recent **updates** to the EIFL model licences for e-journals (subscriptions and backfile purchase) and for datasets and e-book subscriptions
- Opportunities for **local adaptation** of the EIFL model licences
- Presentation on EIFL model licences and **local legal requirements in Lithuania** by Emilija Banionyte
- Q&A

A stylized world map in shades of blue and white, serving as a background for the text.

PART ONE

EIFL Model Licences - recent updates and opportunities for adaptation

Emanuella Giavarra LLM,
Legal Adviser to EIFL

Some background

- Through the EIFL-Licensing programme, we negotiate licence agreements with publishers of **licensed e-resources** on behalf of library consortia (and their member libraries) in EIFL-partner countries
- Over **60 high quality e-resources** from more than 25 vendors are currently available through the EIFL-Licensing programme – see www.eifl.net/list-of-resources for details

Some background (2)

- In 2012, our library partners **saved an estimated US \$215 million** in subscription fees on EIFL-licensed resources – an average discount of over 97%
- In addition to achieving free or highly discounted pricing, we are able to negotiate the **best terms of use** by using the EIFL model licences. *Why?*

What are EIFL model licences?

- EIFL model licences **set out the terms and conditions of use we want to achieve** in our negotiations with publishers
- The licences (which have just been updated) reflect the **latest international best practice** in the licensing of e-resources
- They offer **better access provisions** for users than standard publisher licences – e.g. broad definition of authorised user, remote access, course packs etc

What are the benefits?

- **Better negotiating position** with publishers by setting out what we want from the start
- Much **less time consuming** than negotiating individual publisher licences (all have different formats and terms)
- **Standardisation of terms** and conditions of use makes it easier for libraries to manage and ensure compliance

What are the benefits? (2)

- **Be aware** that occasionally we have to remove or adapt some clauses in the model licence during the negotiation process - but libraries can be sure that the terms and conditions we achieve are the best they possibly can be
- The licences can be **freely adapted** by libraries in partner countries for their own negotiations with publishers

Different model licences for different product types

- EIFL now offers the following model licences to take account of key product types and business models:
 - E-journals: subscriptions and backfile purchases (UPDATED)
 - Datasets and e-books: subscriptions (NEW)
 - E-books: purchase (NEW – we will cover this in the next webinar on Thursday 28th November)

EIFL model licences

- All EIFL model licences follow the **same format** and include the following parts:
 - A licence stating the terms and conditions on:
 - **Who** can use the product
 - **How** access can be provided
 - **What** users can and can't do
 - **Guarantees**, governing law and dispute resolution
 - They are drafted as **an offer** from the publisher to the institution, therefore there is no need for the publisher to sign the licences
 - An “**Acceptance of Licence Form**” which libraries complete and sign to gain access

***What has changed in
recent updates?***

Improved overall clarity

- We have **simplified the language** wherever possible by changing some legal terms into plain English e.g. 'Licensee' to 'Institution'.

Broader definition of Authorised User

- **Who** can use the product (“Licensed Material”)?
 - Authorised Users at Eligible Organisations
 - Staff: permanent, temporary, **retired**
 - Students: undergraduates and postgraduates
 - **Alumni**
 - **Contractors**
 - **Any teachers of Authorised Users**

Authorised users (*unchanged*)

- **Where/when** can Authorised Users use the product?
 - Anywhere (both on-site and off-site) at any time
- **What about walk-in users?**
 - Walk-in users include those visiting the subscribing institution (the “Licensee”) e.g. public library users
 - Walk-in users can access a product (the “Licensed Material”) on site
 - No remote access is permitted

Broader definition of purpose of use

- What type of use is allowed?
 - Access is allowed for “Educational Purposes” only
 - “...use for the purpose of education, teaching, **non-commercial** distance learning, private study and/or research.”

Purpose of use (*unchanged*)

- “Commercial Use” is still **not allowed**
 - “...use of the Licensed Material for the purpose of monetary reward (whether by or for the Institution or an Authorised User)”
...
...”
- The following activities are **not** considered to constitute “Commercial Use”
 - “...the recovery of direct costs by the Institution from Authorised Users...”
 - “...use by the Institution or Authorised Users of the Licensed Materials in the course of research funded by a commercial organisation.”

Permitted uses – improved clarity

- We have re-arranged and grouped the provisions under this heading to improve clarity
- We now specify what institutions can do, and then what Authorised Users can do

Permitted uses – new clauses *(all licences – except free access licence)*

- The following new provision is included in EIFL model licences but please note that it is **not always possible** to get publishers to agree to it:
 - “Throughout the term of this Licence, the Institution and its authors shall be permitted free of charge to store articles appearing in the Licensed Material (in the form published by the publisher (e.g. PDF)) with a maximal time embargo of one year in an (institutional or discipline-specific) repository of their choice and to make them available in Open Access.”

Permitted uses – new clauses *(all licences – except free access licence)*

- Authorised users (e.g. students and staff) can:
 - Save and/or deposit in **perpetuity** parts of the Licensed Material in **electronic repositories** operated by the Institution and/or by an Authorised User on a Secure Network. Access to and use of such repositories shall be limited to Authorised Users.
 - Use the Licensed Material to perform and engage in **text mining/ data mining** activities for academic research and other Educational Purposes and allow Authorised Users to mount, load and integrate the results on a Secure Network and use the results in accordance with this Licence.

What is text mining?

Text-mining is “roughly equivalent to text analytics, refers to the process of deriving high-quality information from text....'High quality' in text mining usually refers to some combination of relevance, novelty, and interestingness.

Typical text mining tasks include text categorization, text clustering, concept/entity extraction, production of granular taxonomies, sentiment analysis, document summarization, and entity relation modeling (i.e. learning relations between named entities)”

(Source: Wikipedia)

What is data mining?

“**Data mining** (sometimes called data or knowledge discovery) is the process of analysing data from different perspectives and summarising it into useful information - information that can be used to increase revenue, cuts costs, or both. Technically, data mining is the process of finding correlations or patterns among dozens of fields in large relational databases.”

(Source: Wikipedia)

Permitted uses - new clauses *(datasets and e-books licence only)*

- The Institutions can:
 - **mount and use** Metadata in bespoke and commercially available library systems to manage library operations;
- Authorised Users can:
 - **modify** the Metadata and create new Metadata of the Licensed Material (“modifications”)

What is metadata?

Metadata is “the textual information that describes the creation, content, or context of a part of the Licensed Material (e.g. date of creation, subject matter, location of digital file, ownership). Metadata refers to the metadata supplied by the Publisher to the Institution and/or the metadata created by the Institution and/or Authorised Users.”

(Source: Wikipedia)

Responsibility of publisher – new clauses (1) *(all licences)*

- Publishers must use reasonable efforts to
 - Meet the **Open URL standard** – for discovery purposes
 - The **W3C standards** – for accessibility purposes
- Publishers must permit **cancellations and substitutions** of material
- Publishers have the right to **withdraw content**
 - If they no longer have the right to publish that content
 - When content infringes copyright or is defamatory etc
 - *But only if*

Responsibility of publisher – new clauses (2) *(all licences)*

- When Publisher withdraws content that is more than **10%** of Licensed Material, the Publisher must give the Institution a pro-rata refund of the fee

Intellectual property rights – new clauses (1) *(all licences – except free access licence)*

- The Institution or Authorised User will **own** the database rights created as a result of text mining/data mining

Intellectual property rights – new clauses (2) *(specific licences)*

- The Institution will **own** database rights as a result of local mounting of content (delivered by Publisher for perpetual access – after termination) *(E-journal licence only)*
- The Institution or Authorised User will **own** any intellectual property rights in the Metadata and Modifications generated by the Institution or the Authorised User *(Datasets and ebook subscriptions licence only)*

Adapting the EIFL model licences for your own negotiations – what to do

- **Remove** all references to EIFL from the licence
- Keep the governing law as English law (the most commonly-used law in international licences) or include your national law – **never be silent** on the governing law in a licence!
- When you add clauses make sure they do **not conflict** with other clauses in the licence so please review as a whole and not just the section

Summary

- EIFL model licences reflect the **latest international best practice** in the licensing of e-resources
- Following a recent review, we **now offer three model licences** to cover different types of products and business models
- All licences offer **better access provisions** for users than standard publisher licences
- They can also be used by library consortia and member institutions for their **own negotiations** with publishers

**Thanks for listening and
happy licensing!**

Emanuella Giavarra LLM

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A world map with a light blue and white color scheme, serving as a background for the text.

PART TWO

EIFL Model Licences – local legal requirements in Lithuania

Emilija Banionyte

*President of the Lithuanian Research Library Consortium
and Library Director at the Lithuanian University of
Educational Sciences*

Special local requirements

- Some countries have special local legal requirements for licences – and this is the case in Lithuania since we joined the EU
- If your country has special requirements, you might need a lawyer to adapt EIFL model licences to your own local requirements

Some background

- The EIFL model licences are an excellent resource – we do use them, and the EIFL Licensing Programme negotiates excellent prices – we do benefit from them, but...
- According to Lithuanian law, the Lithuanian Research Library Consortium needs to organise public tenders for all resources
- *What does this mean in terms of the EIFL model licence?*

Required amendments (1)

- We need to remove all references to EIFL and Stichting eIFL.net in the licence
- As pricing information must come to us direct from the publisher in the form of an offer, we also need to delete the following:

“Details of the offer can be found in the pricing spreadsheet in the members-only section of the EIFL website.”

- However, in the case of EIFL agreements, we expect publishers to quote the EIFL-negotiated price in the offer they send us

Required amendments (2)

- Local requirements mean that we also have to amend the wording in the Fee Schedule including:
 - Exact amount + VAT
 - Invoicing information (installments)
 - Payment information 90 → 60 days

Required amendments (3)

- We have to add a special clause (most discussed by Publishers)...

“The conditions of the Licence Agreement cannot be amended during the validity period of the Licence Agreement, excluding such terms and conditions the amendment thereof would not infringe the principles and objectives set forth in Article 3 of the Law on Public Procurement of the Republic of Lithuania, and the consent of the Public Procurement Office has been received for the amendment of these terms and conditions. The revision of the conditions of the Licence Agreement under the circumstances provided therein shall not be considered the adjustment of the mentioned Licence Agreement if such circumstances have been clearly and unambiguously set and were provided for in the Tender Documents. In the cases when in the course of preparing the Tender Conditions and in signing the License Agreement there was no possibility to predict the necessity to amend the terms and conditions of the Licence Agreement, the parties of the mentioned Agreement will have the right to amend only the nonessential terms and conditions.”

Required amendments (4)

- Governing law
 - Not English but Lithuanian (not all publishers agree...)
- We need to translate all licences into Lithuanian

Required amendments (5)

- We have to replace the following schedules...
 - Schedule 1: Materials
 - Acceptance of Licence Form
 - Annex 1 – List of Collections Selected by eligible institutions
- ...with
 - Tender For Services of Subscription to Online Research Database (Databases) X (X)
 - Minutes of Negotiated Procedure Without a Procurement Notice For Procurement of Services of Subscription to Online Research Database (Databases) X (X)

Summary

- The EIFL model licences are an excellent resource for libraries and library consortia – even if you have to make amendments to suit local legal requirements
- We try to use the EIFL model licences as the basis for all our deals – not only for the ones negotiated via EIFL (not all other publishers accept, but some do)

Thanks for listening!

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***Now it's
question time!***




Further information

- View the EIFL model licences
 - www.eifl.net/faq/where-can-i-view-model-licences
- Find out more about the EIFL-Licensing programme
 - www.eifl.net/licensing
- Any questions about the EIFL-Licensing Programme?
 - Contact Susanna Lob at susanna.lob@eifl.net

Next webinar in the series

- The third webinar in this series (offering more in-depth coverage of the new EIFL model licence for perpetual access to e-books will be held on Thursday 28th November
- Announcements will be sent out shortly

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