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# Managing our E-Resource Licenses: License Expression Standards

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# Why do we License?

- A grant of rights in intellectual property without conveying ownership is inherently a license.
  - We may want the benefits of a legal contract when our deal is not a simple sale.
  - We may want to change the default terms that would prevail if no specific contract were drawn up.
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# Copyright and Contract Law

- Clause by clause, modify or replace copyright terms with the terms of the contract.
    - More or less restrictive.
    - Cannot bind third parties.
  - Copyright law offers good balance of protections and use. Why modify?
    - Software once judged non-copyrightable.
    - Some content still is not copyrightable.
    - Tradition of licensing electronic content.
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# Clickwrap Licensing

- Contract is supposed to represent a agreement between parties.
  - Differing case law on enforceability of contracts of adhesion.
  - *Bowers v. Baystate*, 320 F.3d 1317, (Fed. Cir. 2003)
    - A statutory fair use argument held invalidated by clickwrap license agreement.
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# Why do we License? (redux)

- A license is a contract that can:
    - Modify default rights and obligations under law.
    - Add additional expectations as legally enforceable obligations.
  - Any agreement granting rights in intellectual property is a license.
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**So, this License is Important!**



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# DLF ERM Initiative

- By 1999 libraries were building Electronic Resource Management Systems in-house.
  - Development of a “best practices” guide sponsored by DLF, published 2004.
  - Vendors providing ERM systems. . . .
  - We can now do useful things with license and contract terms!
  - DLF ERMI License elements serve as de facto standards.
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# License or Acquisition or Contract?

- Administrative metadata
    - Who are the parties?
    - When does the license expire?
    - Who is the local contact?
  - Terms of use
    - Authorized users
    - Printing, downloading
    - ILL
    - Reserves, coursepacks...
    - Other use restrictions
  - Obligations of the Parties
    - Warranties and indemnifications
    - Breach remedies
    - Conditions of termination
    - Notice Requirements
  - Business terms
    - Authorized sites
    - Concurrent users
    - Price, cancellation restrictions, price caps
    - Archival rights
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# ERMI Permission Values

- Permitted (explicit)
  - Permitted (interpreted)
  - Prohibited (explicit)
  - Prohibited (interpreted)
  - Silent (uninterpreted)
  - Not Applicable
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# New Standard? Why not use RELs?

- Rights Expression Languages also deal with permissions and prohibitions. Can we use or adapt them?
  - RELs designed for Digital Rights Management.
    - Machine enforcement requires absolutely explicit, very granular expressions.
    - Cannot accommodate ambiguity.
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# Copyright and Licenses are *Ambiguous*

“[Adjudicating fair use] is not to be simplified with bright-line rules, for the statute, like the doctrine it recognizes, calls for case-by-case analysis.”

*[Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)]*

“User may download and print a reasonable number of copies for educational or personal use.”

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# Ambiguity can be desirable

## China Alters Language On Taiwan

By Philip P. Pan

Washington Post Foreign Service

Friday, May 13, 2005

**BEIJING, May 12 -- Chinese President Hu Jintao proposed new diplomatic language Thursday aimed at ending the decades-old state of hostilities between China and Taiwan [...]**

Under the new language, Hu effectively agreed to open talks if Taiwan accepted the principle of "two shores, one China" while acknowledging that the two sides might differ on precisely what that term meant.

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# Permission Values *via RELs*

- Permitted (explicit)
  - ~~Permitted (interpreted)~~
  - ~~Prohibited (explicit)~~
  - Prohibited (interpreted)
  - ~~Silent (uninterpreted)~~
  - ~~Not Applicable~~
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# License Expression Working Group

- Jointly sponsored by DLF, NISO, EDItEUR, and PLS.
  - Large representative membership.
  - Working with EDItEUR's ONIX standards as basis for new ONIX Licensing message.
  - Will allow (but not require) greater specificity than DLF ERMI terms.
  - Still determining complete scope of "license" for encoding and expression.
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# Basic XML Structure

- Definitions
  - Supply terms
  - Usage terms
  - Payment terms
  - General terms
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# Basic XML Structure—Definitions

- Definitions
    - Agents
    - Resources
    - Dates, Periods, Locations
    - Events and States
    - Usages
    - External Document references
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# Basic XML Structure—Usage Terms

- Relies on previous definitions:

This **Agent Class**, “Authorized Users,” may perform this **Usage**, “Print,” with this **Resource**, “Licensed Content.”

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# Conclusions

- Legal rights landscape complex and ambiguous.
  - Useful progress to date in describing that complexity for systematic treatment.
  - Moving forward with developing greater specificity in encoding while maintaining beneficial features of ambiguity.
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# Questions and Comments

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