Introduction

Negotiating licenses can be a daunting task for any librarian. Essential skills include:

- familiarity with state and federal laws pertaining to a broad range of topics
- copyright and fair use
- institutional policies
- values important to the library

A crucial skill is the ability to see licensing from the vendor’s perspective. Libraries approach negotiations advocating for library patrons’ privacy, fair use rights, and legal obligations. Vendors have similar perspectives. There is tremendous benefit for all stakeholders involved by approaching licensing as a way for each side to better understand the other. Consider replacing “we will not do that” with “we are unable to agree to this specific language. But here is why and an alternative.”

Reading a First Draft

Most libraries start the licensing process by requesting a copy of the vendor’s standard license. This copy should be in an editable format such as Word where track changes can be used throughout the negotiation process. This will allow both parties to make comments and clearly view revisions while still seeing the original content. Key points to consider:

- Legal points which directly conflict with state laws
- Accessibility/VPAT language
- ILL and reserves
- Specific institutional language

The first draft returned to the vendor is usually the library’s ideal draft. Any substantial changes made should include a comment citing relevant statutes/codes/laws and include explanations. This will allow the vendor’s legal department to the reasoning behind the edits.

Common Terms

Creating a set of pre defined terms ahead of time can speed up the licensing process immensely. Advantages include:

- Legal clauses requiring approval from campus legal are approved
- All licensing staff have a mutual starting point
- Ability to track uniform terms across an institution’s licenses

These terms will constantly evolve and should never be static. As language changes after each negotiation, update the document which will save time on the next license.

Advocate and Understand

After draft one is returned, the library and the vendor each decide what points are flexible and which they must remain firm on. This is where having a thorough understanding of each other’s background and viewpoint is important.

The library should be aware of:

- What information is in the resource and who is providing it
- How it functions and how patrons will use it
- The access method(s) provided

At the same time, the vendor should be aware of:

- Business practices specific to libraries/non-profits
- Current terminology and trends in the library field
- Methods for providing remote access to electronic resources

The licensing process can be streamlined by learning the other side’s viewpoint.

The Final Draft

Licensing can be a lengthy process and takes time. Depending on the terms involved and the length of the document, the process can drag along. Don’t be discouraged! A license agreement is a legally binding agreement and it’s important to get it right. Once an acceptable draft is ready, convert the final Word document to PDF and have both parties sign it. Make sure to flag the license for when it needs to be renegotiated.

Resources

California Digital Library Licensing Toolkit: edlib.org/services/collections/toolkit/

Example of Model Licensing Terms: http://guides.cuny.edu/licensing/Standard

Liblicense Model License Agreements: liblicense.crl.edu/licensing-information/model-license/

Model Accessibility Language (BTAA): btaa.org/library/accessibility/library-e-resource-accessibility---standardized-license-language

NERL Model Consortial Agreement: http://nerl.org/nerl-documents/nerl-model-license