

Licensing, consortia, aggregators and consolidators

Words of increasing importance for librarians, by Charu Sood

Two recent events prompted me to write on this fast-developing area of increasing interest to librarians. The first was my attendance at a workshop on *Licensing negotiations for electronic information* conducted by Ann Okerson, assistant university librarian, Yale University. The second was the arrival of a report by Jo Pye and David Ball of Bournemouth University titled *Library purchasing consortia in the UK: activity, benefits and good practice* BLRIC Research Project RIC/G/403.

Two years ago I attended a half-day licensing workshop conducted in Canberra by Ann Okerson, so it was interesting to hear about developments since then. Ann brings an enormous amount of energy, knowledge and enthusiasm to the cause of standing up for libraries' rights in negotiating licences for purchase of electronic products. I admire immensely Ann's willingness to share information, and also her persistence and perseverance in fighting demands from publishers for secrecy in not allowing the details of the contract to be made public. Those of us who are familiar with out-sourcing of government services are only too familiar with the dreaded phrase 'commercial-in-confidence' being used with monotonous regularity to keep secret the financial deals being made between the provider and the purchaser of a service where the purchaser is a public sector organisation and the provider is private sector. When we agree to keep the prices we pay secret, it leaves the publishers free to negotiate different deals and charge on a differential basis dependant on any number of factors including the size of the contract, the skills of the negotiator or the sector.

The seminar was packed with details on licensing issues, from the basics of licensing to how to manage licences once you have signed them. There was a demonstration of software available free from the Liblicense home page which helps people to generate their own licences. The software provides templates which include all the essential information — all you need do is fill in the details and you end up with a licence which could have been written by a lawyer. Yes it is American, but it does provide a good starting point.

Annabelle Herd led an interesting discussion on copyright and licensing and although there never are any simple answers, I was heartened to hear that the copyright law operates at a higher level than contract law which governs the licence. However once a contract is signed it takes precedence so it is best to ensure that the copyright provisions are explicitly covered in the licence. This is not always going to be easy. Often licence agreements will not make provision for the supply of interlibrary loans. This was my only disappointment with Ann Okerson, as she said that if she had faculty clamouring for the library to buy a particular source and this was the only sticking point in signing the deal she would sign.

My concerns about capitulating on the interlibrary loan provisions are based on the fact that one is giving away some rights, such as library copying provisions, which are available to libraries under the copyright legislation. Judging by comments from interlibrary loans staff I suspect that many collection development librarians are not fully aware that they are signing these rights away. Just as you fight hard to preserve the rights of your users, remember the rights of your interlibrary loan users when signing license agreements.

One of the main developments in the last two years is the phenomena of the development of aggregators and consolidators and the formation of consortia. An aggregator is a packager who sells a collection; a consolidator is more like an electronic subscription agent who allows libraries to chose individual titles and pay for them separately; and consortia are groups of libraries who join together to purchase materials. Being part of a consortia provides libraries not only with the benefit of being able to negotiate price, but equally importantly, the terms of the licence. It was clear that some of the success that has been achieved by Ann in advancing the cause of libraries' rights has been because in addition to her perseverance and what I call her principled negotiating style she has been negotiating on behalf of a rich and powerful consortia.

Consortia come in many different

shapes and size — some such as NESLI in the United Kingdom are national initiatives. There are also other examples of national initiatives in Canada and in Europe. Consortia tend to be sector based or regional, with a formal governance framework and dedicated staff, or voluntary with staff from member libraries undertaking the work of evaluating and negotiating for resources. Mostly they appear to be involved in electronic content licensing, but according to the report mentioned above, there are increasing signs of consortia being formed by libraries in all sectors to purchase the more traditional library materials. Public libraries in the United Kingdom have been forming consortia to purchase books and to negotiate for periodical subscriptions centrally. There are probably as many different governance and communication structures as there are consortia. In the United Kingdom the two drivers for the formation of consortia in public libraries appear to have been the local government reorganisation and European Community purchasing directives.

The success and effectiveness of the consortia appears to vary depending on size and organisational factors as well as funding sources. Because of the relative newness of consortia there does not appear to be much formal evaluation yet but I expect that as consortia become more mature we will see some solid cost-benefit analysis to demonstrate their value.

The International Coalition of Library Consortia (ICOLC) was formed in 1997 and has forty-five members. Although the membership is predominantly United States based consortia, there are members from other countries including the United Kingdom, Canada, Germany, Israel and the Netherlands. From Australia both CSIRO and the Council of Australian University Librarians (CAUL) are members.

An issue we did not touch on much during the workshop was the bundling of electronic products by aggregators. This bundling results in libraries subscribing to a much larger number of journals than they would normally have acquired. A heated debate has been raging on this issue on the liblicense list with some librarians ques-

tioning the ethics and effectiveness of consortia purchasing bundled products and arguing that publishers try to off-load some of their not so profitable or viable publications on the backs of their popular and in demand titles. Others argue that they offer a bigger choice to their clients who appreciate access to a broader range. This issue appears to be shaping up as the next contentious one in negotiating licences. The California State University (CSU) has already fired the first shots in this campaign by adopting a tendering approach to seeking expressions of interest for electronic products on a customised package basis. Effectively this has given them the negotiating edge as they have outlined their requirements and are then in a position to evaluate the responses from suppliers. In July this year CSU signed a contract with EBSCO to provide access to all 500 core titles they required.

What is happening in Australia? As mentioned above CAUL and CSIRO are both members of ICOLC. CAUL has a formal committee, the CAUL Electronic Information Resources Committee (CEIRC), for the purchase of electronic products. There is a very active closed discussion list of its members to discuss who will buy what, under what terms, and what formula will be used for shar-

ing the costs. The CAUL office handles the negotiations. There is no central pool of funds to purchase licences and each CAUL member subscribes to what they need and can afford.

For public libraries effective consortia type arrangements have been operating in some states and territories which have central purchasing arrangements for traditional library materials. In other states, initiatives are being taken to negotiate licences for electronic products on behalf of all the public libraries in the state. Under Gulliver, one of the Libraries Online projects funded by the Victorian government, central funding has been made available for purchase of electronic databases for public libraries.

There is a growing activity in Australia in the formation of consortia. However in terms of size the Australian market is relatively small.

One danger I see in the development of many small consortia in Australia is that the market will get fragmented thus reducing the advantages of large scale purchasing. It can also lead to differential pricing for different sectors. Differential pricing is something librarians need to unite to fight. We are now seeing this practice creeping into document supply where nor-

mally one price has been paid for an article regardless of the type of library which is ordering the article.

So how can we in Australia benefit from the advantages available to large scale consortia? I believe we need to look at some form of a national site license for electronic resources which are of interest to a majority of libraries. But that raises many questions. If we are to have a national initiative, how would it be funded and resourced? What governance should it have and who would be responsible for carrying it? Centralised funding by an enlightened government would be great, but even were the government inclined to provide funds, given that there is no central body with policy responsibility for all libraries in Australia similar to Libraries and Information Commission in the United Kingdom, it is doubtful if such an initiative could be implemented quickly. If the cost is to be shared what business models would need to be developed? These are weighty questions and I do not have answers.

However I do have a strong conviction that these and other matters of library policy and co-operation at the national level are questions which need to be tackled by the Australian library industry. ■

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