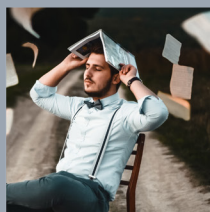
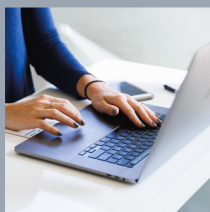
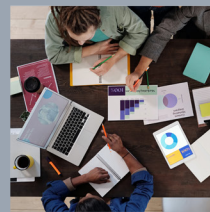
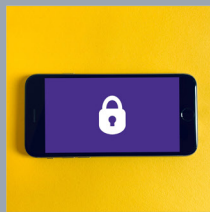
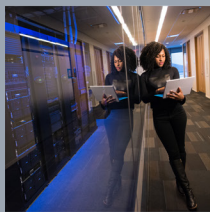
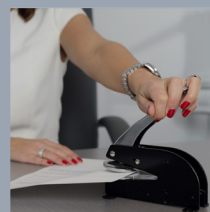


# THE ASERL ELEVEN

## RECOMMENDED PRINCIPLES AND TERMS FOR ELECTRONIC RESOURCE AGREEMENTS

v 1.0 - Spring 2022



## ACKNOWLEDGEMENTS

The ASERL Licensing Principles project arose from the ASERL Big Deal Community of Practice co-chaired by Jennifer Mezick, University of Tennessee, Knoxville and Lois Kuyper-Rushing, Louisiana State University, in March, 2021. Two groups of ASERL library representatives were created, one to draft the licensing principles and a peer review group to review the drafted principles. These principles were approved by the ASERL Board on November 10, 2021.

Special thanks to Jennifer Mezick who, as Working Group Chairperson, organized the group's work, created draft documents and ensured the continuity of multiple principle drafts, identified principle language from external sources, led meetings, and kept the group on track. The successful completion of the ASERL Licensing Principles is due to Ms. Mezick's leadership.

ASERL offers our thanks to the following libraries and library consortia for their sample language which inspired ASERL's Working Group in drafting this publication:

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## ► ASERL LICENSING PRINCIPLES DRAFTING GROUP (FEBRUARY - NOVEMBER 2021)

**Florida State University:**  
Scott Schmucker

**Georgia State University:**  
Skye Hardesty, ASERL Big Deal CoP co-chair  
(July 2021 - present)

**Louisiana State University:**  
Lois Kuyper-Rushing,  
ASERL Big Deal CoP co-chair  
(December 2019 - June 2021)

**Louisiana State University:**  
Tom Diamond

**North Carolina State University:**  
Tessa Minchew

**University of Alabama at Birmingham:**  
Peggy Kain

**University of Alabama:**  
Millie Jackson

**University of Mississippi:**  
Christina Torbert

**University of South Carolina:**  
Amie Freeman

**University of Tennessee:**  
Jennifer Mezick, Working Group Chairperson, ASERL Big Deal CoP co-chair  
(Dec. 2019 - present)

**University of Virginia:**  
Brandon Butler

**Virginia Commonwealth University:**  
Amanda Echterling

**Virginia Tech:**  
Nitra Eastby

**ASERL:**  
John Burger

## ► ASERL LICENSING PRINCIPLES PEER REVIEW GROUP (NOVEMBER - DECEMBER 2021)

**Auburn University:**  
George Stachokas

**Clemson University:**  
Chris Vidas

**Johns Hopkins University:**  
Liz Mengel

**Mississippi State University:**  
Bonnie Thornton

**University of Tennessee:**  
Elyssa Gould

**Virginia Tech:**  
Edward Lener



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## ► INTRODUCTION

The following set of eleven principles for library content licenses was developed by a group of representatives from ASERL member libraries with several goals in mind:

- To make life easier for our colleagues by setting out what we consider to be the ideals libraries should pursue in each of the license terms covered here, as well as an example of license language that achieves those ideals, where possible.
- To give guidance to vendors so that they can present libraries with terms that are acceptable at the outset, saving everyone time and effort in negotiations.
- To establish and strengthen norms around licensing terms in key areas that may be the subject of uncertainty or disagreement between libraries and vendors to best serve libraries' missions.

ASERL believes every provision in a content license presents both parties with an opportunity to affirm core values. We are hopeful that this document will help ensure library values shape and inform the licenses that govern the information our institutions acquire on behalf of our users.

## 1 ACCESSIBILITY

ASERL seeks to ensure equitable access to information as a core ethical commitment, as well as a legal obligation. ASERL is a founding member of the Library Accessibility Alliance (LAA), and recommends ASERL members and others look to LAA for best practices in this evolving area. LAA is a multi-consortial organization that “promotes equitable access to library services and electronic resources.”

### SUGGESTED LICENSE AGREEMENT LANGUAGE

*Please see the Library Accessibility Alliance website for standardized license language.*

***<https://libraryaccessibility.org/resources>***

## 2 AUTHOR RIGHTS RETENTION

ASERL seeks to protect the rights of authors. License language should ensure that affiliated authors retain their copyrights and the right to share their work for the public good, openly and without embargo, including the right to deposit their work in an appropriate open repository, subject to an open license of the author's choosing. Vendors should work to provide tools/mechanisms that facilitate direct deposit of scholarly articles in the institution's repository. Content licenses should make clear that vendors will not require affiliated authors to waive licensing or deposit policies, mandates associated with institutional policy, funder policy, or other sources.

### SUGGESTED LICENSE AGREEMENT LANGUAGE

*Notwithstanding any agreements to the contrary, authors who are Authorized Users of Licensee ("Authors"), whose work ("Work") is accepted for publication by Licensor during the Term, shall be granted the non-exclusive, irrevocable, worldwide, royalty-free right to use their Work for scholarly and educational purposes, including self-archiving or depositing the Work in open repositories or archives (including the author's own web pages or departmental servers) subject to an open license of the author's choosing, and to comply with all grant or institutional requirements associated with the Work. The parties to this License agree that Authors are third party beneficiaries of this provision of the Agreement. Nothing in this section shall eliminate or limit any other rights that Licensee or any Author may have to deposit, host, or make available the Work published by Licensor. Licensor shall undertake reasonable efforts to provide tools and mechanisms that facilitate deposit of Work into the institutional repository as part of the article publication workflow.*

**ASERL believes libraries  
should have the right to  
share pricing and contract  
information...**



### **3 CONFIDENTIALITY AND NONDISCLOSURE STATEMENTS**

To allow for fair and equitable negotiations, license agreements should not include non-disclosure and confidentiality requirements. ASERL believes libraries should have the right to share pricing and contract information with interested parties to promote transparency and collaboration.

*See also: Principle #11 and Suggested Licensing Agreement Language for User Privacy and Data Security.*

#### **SUGGESTED LICENSE AGREEMENT LANGUAGE**

*No part of this Agreement or the exhibits, appendices, and other documents related hereto shall be confidential, and Licensee may publish pricing and other terms as it deems appropriate.*

### **4 CONTENT RETENTION /POST-TERMINATION ACCESS**

ASERL believes libraries must provide consistent, reliable access to resources for faculty and students to support their scholarly and research activities over the long term. In the digital environment, it is vital that institutions invest in an enduring core collection that is accessible regardless of evolving vendor business models and/or technology platforms. Content licenses should provide perpetual access rights to licensed content wherever possible. If hosting fees are required, these amounts should be strictly defined and limited as much as possible.

#### **SUGGESTED LICENSE AGREEMENT LANGUAGE**

*ASERL recommends the LIBLICENSE terms for “Perpetual License and Archives.”*

***<http://liblicense.crl.edu/licensing-information/model-license/>***

## 5 DIGITAL RIGHTS MANAGEMENT

ASERL believes Digital Rights Management (DRM) makes licensed resources less useful for library users, limiting their lawful scholarly activities by controlling when, where, and how they can consult licensed resources. Content licenses should forgo DRM restrictions in favor of usability, regardless of the platform through which content is provided. Where the vendor insists on DRM, the library should have access to relevant technical details and reserves the right to terminate the agreement in light of its discovery of unduly restrictive DRM.

### SUGGESTED LICENSE AGREEMENT LANGUAGE

*Digital Rights Management (DRM) technology will not be used in such a way as to limit the usage rights of a Licensee or any Authorized User as specified in this Agreement or under applicable law. In the event that Licensor utilizes or implements any type of DRM technology to control the access to or usage of the licensed content, Licensor will provide to Licensee a description of the technical specifications of the DRM and how it impacts access to or usage of the licensed content. If the use of DRM renders the licensed content substantially less useful to the Licensee or its Authorized Users, the Licensee has the right to terminate this Agreement.*

## 6 E-RESERVES / COURSE PACKETS

ASERL affirms the principle of fair use which protects the use of reasonable amounts of content in e-reserves and course packs, even absent a license. Access to articles, chapters, illustrations, and other materials assigned for coursework is a core service that libraries provide to faculty and students. Content licenses should enable the use of a reasonable amount of licensed content for electronic reserves and related purposes. Fair use rights should be enhanced, not reduced, when libraries pay for access.

### SUGGESTED LICENSE AGREEMENT LANGUAGE

*Licensee and Authorized Users may use, with appropriate attribution, a reasonable amount of the Licensed Content, including but not limited to text, audio, video, figures, tables, and illustrations in the preparation of electronic reserves, course packs, or other educational materials.*



## **7 INTERLIBRARY LOAN**

ASERL affirms that interlibrary loan (ILL) is a core library function that ensures library users who occasionally need resources held at other libraries can request these resources through their home institutions. Content licenses should permit ILL to the full extent permitted by US copyright law. ASERL also believes the CONTU Guidelines are outdated and should no longer be relied on as an appropriate measure of ILL. As such, content licenses should not include numerical limits on ILL. This is consistent with the flexible statutory exemption in 17 U.S.C. § 108(g)(2) and the general right of fair use.

### **SUGGESTED LICENSE AGREEMENT LANGUAGE**

*Licensee may fulfill requests from other libraries, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in accordance with the U.S. Copyright Act. Requests may be fulfilled using electronic, paper, or intermediated means.*

*Nothing in this Agreement, including but not limited to Authorized Uses, shall be interpreted to diminish the rights and privileges of the Licensee or Authorized Users with respect to any of the licensed content, including exceptions or limitations to the exclusive rights of copyright owners under Section 107 and 108 of the U.S. Copyright Act. In the event that any content included in the licensed content is in the public domain or has been issued under a Creative Commons or other open license, Licensors shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.*

## **8 PRICE AND COST TRANSPARENCY**

ASERL believes libraries need meaningful information about vendor products and prices to make well-informed decisions. Product and pricing schemes that are needlessly complex or opaque conceal inequity and undermine trust. To facilitate a working market, vendors should provide prices in simple, clear terms that enable comparison across products, across vendors, and across institutions. Any proposed price increases must be clearly justified by improvements to the quality of services and/or content.

*See also Principle #3, Confidentiality and Nondisclosure Statements*

## 9 SUPPORT FOR OPEN ACCESS

ASERL seeks agreements that promote open access to research in ways consistent with these broader licensing principles, such as transparent pricing and the retention of authors' rights to publish and self-archive their own work. In exploring open access arrangements, libraries should resist the inequities and dysfunctions associated with subscriptions (e.g., unsustainable cost and exclusion of authors and readers). Open access models should be transparent, predictable, and sustainable for vendors, libraries, and authors.

*See also Principle #2, Author Rights Retention; and Principle #9, Price and Cost Transparency.*

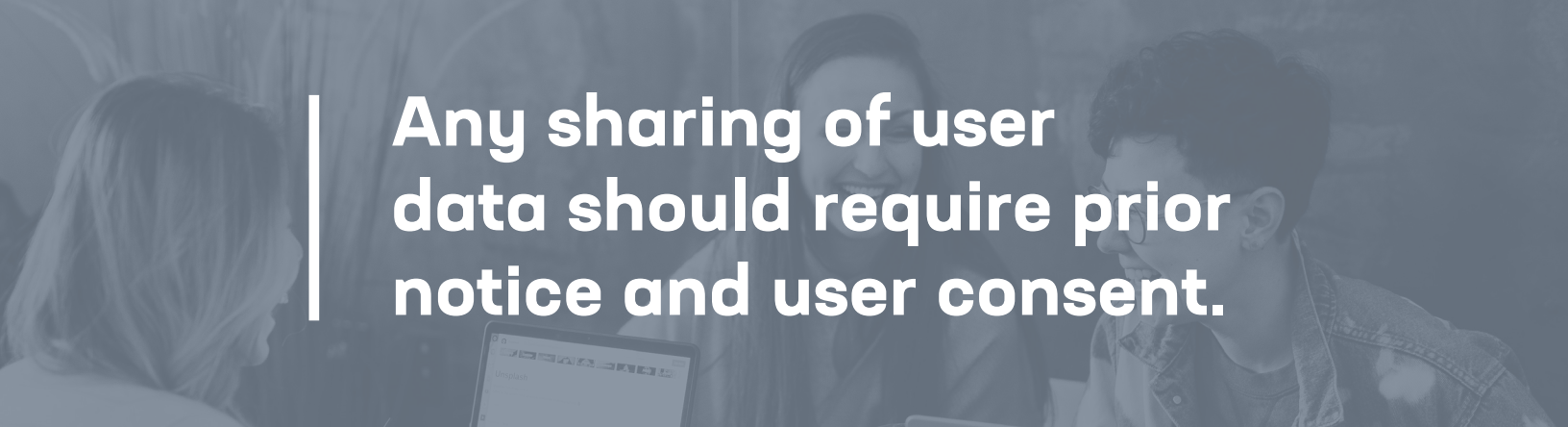
## 10 TEXT AND DATA MINING

ASERL affirms that fair use protects text and data mining (TDM). The right to read also includes the right to perform computational analysis. Content licenses should provide support for computational uses of licensed content, with no unreasonable restrictions. Any vendor fees for TDM should be clearly associated with additional work required to support TDM-related access.

### SUGGESTED LICENSE AGREEMENT LANGUAGE

*Notwithstanding anything else in this agreement, Authorized Users may use the licensed content to perform and engage in text and data mining activities for research, teaching, scholarship, and other educational purposes, and may utilize and share the outputs of text and data mining in their scholarly work. Licensor will cooperate with Licensee and Authorized Users in making the licensed content available in a manner and form most useful to the Authorized User.*

**Open access models should be transparent, predictable, and sustainable for vendors, libraries, and authors.**



# Any sharing of user data should require prior notice and user consent.

## **11** USER PRIVACY AND DATA SECURITY

ASERL affirms that library user data should only be used to enable the provision of licensed content and services. Any sharing of user data should require prior notice and user consent. Personalization tools that disclose personal information may hold value to our users, but users must be presented at the point of registration with clear and concise language about how their personal information will be used, stored, and shared. Such features should be optional to the user and under no circumstances should an authorized user be required to register or opt-in to an additional information sharing policy as a prerequisite for access to licensed content. Vendors should be barred from using data about library users' research activities as part of surveillance products.

### **SUGGESTED LICENSE AGREEMENT LANGUAGE**

*Licensor agrees to maintain the confidentiality of any data relating to the usage of the licensed content by Licensee and its Authorized Users. Such data may be used solely for providing access to the licensed content under this agreement and may only be provided to third parties in aggregate, anonymized form, and only with prior notice to and consent from Licensee. Licensor will not incorporate data from authorized use of resources licensed under this agreement in products sold to third parties, including governments, to facilitate surveillance, "threat assessment," or for any other purpose. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party except in response to a subpoena, court order, or other legal requirement. If Licensor is compelled by law or court order to disclose personally identifiable information of Authorized Users or patterns of use, Licensor shall provide the Licensee with adequate prior written notice as soon as is practicable, so that Licensee or Authorized Users may seek protective orders or other remedies. Licensor will notify Licensee and Authorized Users as soon as is practicable if the Licensor's systems are breached and the confidentiality of personally identifiable information is compromised. The Licensor's obligations under this clause will survive the expiration or other termination of this agreement.*



**Robert W. Woodruff Library**  
540 Asbury Circle, Suite 316  
Atlanta, GA 30322-1006  
404-727-0137  
[www.aserl.com](http://www.aserl.com)

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