

ASERL Eleven License Review: DeGruyter

Publisher or Vendor: DeGruyter

License Identifier: General License Agreement for the usage of DeGruyter databases, eBooks and eJournals

Date: 04/2024

PRINCIPLE 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:

ASERL recommends the [language provided by the Library Accessibility Alliance](#).

Compliance Rating and Recommendations

Does Not Meet Criteria

Contract contains no accessibility, ADA, or other ensuring text from this principle. To comply, licensor should bring all parts of the service into compliance with the ASERL 11 standards, add accessibility clause using the ASERL 11 agreement language to standard license, and supply VPAT.

PRINCIPLE 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.

Compliance Rating and Recommendations

Does Not Meet Criteria

License addresses post-publication database, ejournal, ebook, and archival content. No agreement language or clause on author rights retention or any ensuing text from this principle.

PRINCIPLE 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.

Compliance Rating and Recommendations

Meets Principle Criteria

License is silent on confidentiality, a nondisclosure agreement, or any ensuing text from this principle. Reviewers scored this as "Meets Principle Criteria" as a lack of noted contract language is a positive. To comply, licensor should continue to remain silent on this principle (which will allow libraries to share pricing and contract).

PRINCIPLE 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."

Compliance Rating and Recommendations

Partially Meets Requirements

The license includes some language on perpetual access rights and offers an option for a Perpetual License Fee. To comply fully, the licensor should include clause on post-cancellation/termination access rights, specifically the language from Section 8 of [LIBLICENSE terms](#).

PRINCIPLE 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.

Compliance Rating and Recommendations

Does Not Meet Criteria

The license includes language restricting DRM. To comply fully, the licensor should bring all parts of the agreement in compliance with ASERL 11 standards by replacing the language in clauses 4.4, 4.6, and 4.8 with the ASERL 11 suggested agreement language.

PRINCIPLE 6: E-RESERVES AND 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.

Compliance Rating and Recommendations

Meets Principle Criteria

4.6 provides for the reasonable use (15% of the services or a chapter or an article, in which the smaller part of each is essential) for Learning platforms (LMS) and so-called Electronic Coursepacks, but not for so-called MOOCs (Massive Open Online Courses). Reviewers agree this Meets the Principle Criteria but recommend licensor replace the language in this clause with the ASERL 11 suggested agreement language.

PRINCIPLE 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, Licensor shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.

Compliance Rating and Recommendations

Partially Meets Requirements

License includes some language in clause 4.8 allowing for "non-commercial inter-library loan services" by use of "secure electronic transmission service". To comply fully, licensor should replace the language in this clause with the ASERL 11 suggested agreement language.

PRINCIPLE 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

Compliance Rating and Recommendations

Meets Principle Criteria

License includes fees in Appendix 1. The license includes language in clause 3.2 specifying that the amount of the update or annual fee is based on the amount of additional content added to the database within a year and is defined on average one year in advance.

PRINCIPLE 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.

Compliance Rating and Recommendations

Does Not Meet Criteria

License does not include language supporting or promoting open access. Reviewers agree that it is unclear if the products or services covered under the agreement are subject to open access models.

PRINCIPLE 10: SUPPORT FOR 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.

Compliance Rating and Recommendations

Partially Meets Requirements

Clause 4.5 provides for text and data mining with the only restriction being for commercial purposes. To comply fully, licensor should retain this language or replace with ASERL 11 suggested agreement language.

PRINCIPLE 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.

Compliance Rating and Recommendations

Does Not Meet Criteria

The license includes some language on user data. To comply, licensor should include full details, including specific laws or regulations, on which "legal data protection regulations" will be observed in accordance with the agreement. To comply fully, licensor should bring all parts of service into compliance with the ASERL 11 standards in order to replace existing clauses 10.2, 10.3, and 10.4 with ASERL 11 suggested agreement language.

Note on Process:

This license was redacted by ASERL staff and reviewed individually by three librarian volunteer reviewers. This consensus report was created by that review team after completing individual reviews.

ASERL Eleven Peer Reviews are intended to advise librarians and library vendors on contract language that supports widely held library principles; a general license template was provided by the publisher or vendor. Any license or contract should be reviewed locally to ensure consistency with institutional practices. Only text specifically contained in the document supplied by the publisher was reviewed. Additional text contained in referred documents, such as privacy policies and terms of use, were not included in the assessment. ASERL strongly recommends that all agreed-upon terms be included within the text of the signed agreement.

For questions or comments, please contact Rebecca Crist at rebecca@aserl.org.