



# When the license is terminated...

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Shared Preservation and Collection Strategies

Friday, March 19, 2004



# When the license is terminated...

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- Introduction
- Background on Long-Term Accessibility
- Continued Access to Cancelled Electronic Products
  - Legal Aspects
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- Conclusion

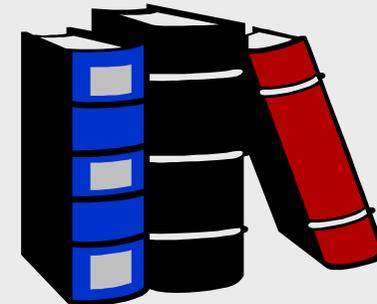
# When the license is terminated...

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Access *versus* Ownership



or



Access *and* Ownership?



## When the license is terminated...

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### Background on Long-Term Accessibility

- Computer technology supports quick access to current information, and does not support long-term availability

(?)

- Publishers' Archives
- The Role of National Libraries
- Cooperative Archiving Models



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Publishers **should** accept responsibility for archiving and providing continuing access to their published content over the next few years, and some **may be willing** and able to accept this role on a long-term basis... In some countries, large consortia or national libraries **may be willing** and able to take responsibility for archiving, and the cultural environment and technological capabilities of each country **should** be allowed to determine the best model for archiving.

**(ICOLC: Statement of Current Perspective and Preferred Practices for the Selection and Purchase of Electronic Information. Dec. 2001)**



## When the license is terminated...

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Long-term preservation is a complex, time-consuming and cost-intensive long-term task. But we need short-term solutions when the license is terminated...

## When the license is terminated...

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### Continued Access to Cancelled Electronic Products

- Legal Aspects: E-Journals
  1. Data Delivery and Access Possibilities
    - Article Files with no Functionality
    - Perpetual Access to the Journals on the Publisher's Server
    - Perpetual Access via Third Parties like OCLC
    - Local Hosting (Science Direct on Site)

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### Continued Access to Cancelled Electronic Products

- Legal Aspects: E-Journals
  2. What happens if the publisher doesn't continue to host the data?
    - We should plan ahead and make respective provisions in our contracts.
    - The OCLC Solution

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### Continued Access to Cancelled Electronic Products

#### ➤ Legal Aspects: E-Journals

#### 2. What happens if the publisher doesn't continue to host the data?

- When an electronic journal changes publisher, the content is transferred to the platform of the new owner, including backfiles, but duties against licensees are not transferred.
- ALSP guidelines for good practice: When a society journal moves to a new publisher (2002)

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### Continued Access to Cancelled Electronic Products

- Legal Aspects: E-Journals
  - 3. The extent of permanent access has to be agreed:
    - Time Period:
      - All Issues published during the License Period
      - All Publications made available during the License Period

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### Continued Access to Cancelled Electronic Products

➤ Legal Aspects: E-Journals

3. The extent of permanent access has to be agreed:

➤ Coverage:

1. Access is restricted for each institution to the subscriptions they had paid for during the license term (ACS).
2. Access is opened to those journals which were available via cross access during the license term (Springer).
3. All journals are available (Blackwell, Kluwer, OUP).

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### Continued Access to Cancelled Electronic Products

- Legal Aspects: Databases
  - Provider, Software House, Distributor
  - Recent Version as Archive Copy on CD-ROM
    - It depends on the content, if it makes sense.
  - Problem:  
Online Databases without CD-ROM Equivalent
  - Permanent access to journals fulltext databases is necessary.

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### Continued Access to Cancelled Electronic Products

- Legal Aspects:  
Beginning and End of Archive Access
  - Some providers set a minimum license period before licensees are granted archive rights.
  - Some publishers restrict the archive access to a certain time period.

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### Continued Access to Cancelled Electronic Products

- Technical Aspects:
  - The publisher's system must be able to manage access.
    - No Problem on the Customer's Side!
  - Delivery of Article Files without Functionality:
    - Many Problems on the Customer's Side!
  - Local Hosting as Preferred Option:
    - Other products can be loaded as well.
    - Regular maintenance is necessary.

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### Continued Access to Cancelled Electronic Products

- Financial Aspects:
  - Often license agreements don't specify costs.
  - Archive CD-ROMs at no Extra Costs
  - Online Access at no Extra Charge
  - „Minimal Fee“ or „Fair and Reasonable Price“
  - Local Hosting with/without Commercial Software



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### Conclusion

- Long-term-preservation will become a never-ending story.
- Librarians have to take decisions **now**, when a license is terminated.
- License agreements should be more precise in this point.
- In any case we should examine, if archive data are really needed.
- It is essential to co-operate in this field in order to set standards.

## When the license is terminated...

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German, Austrian and Swiss Consortia Organisation





## When the license is terminated...

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When the license is terminated...

**The presentation is terminated...**

When the license is terminated...

## **When the license is terminated...**

### **Introduction**

Our topic is shared preservation in a broader sense. Klaus Kempf confined himself to print collections and it's now up to me to deal with the digital part. Please be assured that I will not take it upon myself to lecture on the problems of long-term preservation in the next 25 minutes. It would take much more time to deal with this difficult stuff profoundly. I would rather like to concentrate on and take a closer look at some very practical aspects when a license for a digital product is terminated.

In the course of the last decade purchasing physical media has been supplemented and in many cases replaced by licensing digital products. This new situation for libraries was depicted with the term "access versus ownership". But do we really mean "versus"? Isn't it access **and** ownership what we want – in the form of archive data or perpetual access? Is this expectation justified, reasonable and realistic? Let's see!

### **Some background to long-term accessibility**

We learned that computer technology supports quick access to current information, and does not secure long-term availability. But a lot of recent publishers' and libraries' initiatives explode this theory. The first digital journals archive was JSTOR. A similar German initiative - "DigiZeitschriften"- was launched three years ago and is just offering it's first trial period. Several commercial publishers and societies have offered the complete range of titles and years of their journals on a purchasing and/or licensing basis. These projects see themselves as digital archives. One of their goals is to replace printed backfiles in order to save staff and storage costs. I'm quite sure that only very few licensees really removed paper duplicates of licensed volumes from their shelves despite double costs and even with a perpetual license in the hand.

Members of my consortium asked if JSTOR would provide archive data should the license be terminated and, of course, the answer of the licensor was: "We **are** the archive". There is still a deep distrust against e-only solutions, especially when the data are stored on the host of a commercial publisher, but consortia provide the infrastructure to co-operate in the field of shared print holdings. It should not be necessary to hold extensive print backfiles in each partner institution.

Long-term preservation is a priority assignment of our National Libraries. The complete digital archive of Elsevier's journals is hosted on a server at the Dutch National Library. Die Deutsche Bibliothek was coordinator of a co-operative concept for long-term archiving in

Germany. Based on the technical standard of the “Open Archival Information System” a model of shared responsibilities was designed. The project is still work-in-progress. I doubt however whether preservation on a national level would be a solution for licensees of e-journals or other digital products all over the world should they be forced to cancel their license. National authorities are more or less prepared for preserving the digital resources of their country not on managing access rights to different titles of diverse publishers for numerous customers and for varying license periods.

Quite another approach is the LOCKSS (Lots of Copies Keep Stuff Safe) model, launched at Stanford University and based on the idea that enough electronic copies of each product are spread over the world to guarantee that the content is preserved like in the print world. LOCKSS is a system, which can be implemented on local computers in order to safeguard e-journals locally.

The ICOLC (International Coalition of Library Consortia) Guidelines are a bit hesitant on this question. The chapter Archiving Models contains a remarkable number of subjunctives.

Each model has to cope with rapidly changing hardware and software requirements whereas data have to be kept readable and understandable and protected against manipulation. Long-term preservation is a complex, time-consuming and cost-intensive long-term task. But we need short-term solutions in case a license is terminated.

The market for electronic products grows at breakneck speed, whilst libraries' budgets in Germany stagnate or decrease. We have to select professional information thoroughly and establish priorities both for print and electronic sources. Once the decision has been taken and the license is not renewed librarians want to keep what they have paid for as they were used to in the print world. It is indeed a very justified question if access should be kept available in any case.

### **Continued access to cancelled electronic products**

Let's examine the legal fundamentals:

When I started my job as manager of the HEBIS-Konsortium four years ago I learned very quickly that the provision of archive data was an absolute crucial point in license agreements for our members. It turned out, however, that they didn't mean archiving but perpetual access to data which they had paid for during the license term. I would like to distinguish between electronic journals and databases and take a closer look at e-journals first. Most journal providers offer some kind of permanent use. But the conditions and potential realizations are extremely different. In license terms the section archive data has to consider several aspects:

1. The kind of data delivery and access possibilities range from archival, non-searchable files, delivered on a data medium or via ftp, to mirror sites where the data are fully searchable:
  - Karger, Kluwer and Wiley e.g. provide CD-ROMS or other archival media and, in addition, or optionally perpetual access to the journals on the publisher's server or on an own server or via third parties like OCLC.
  - An ideal technical and legal solution is certainly Elsevier's Science Direct on Site License. The data are hosted on the licensee's server and perpetual access is guaranteed. Our consortium runs a Science Server in Frankfurt. The latest electronic journals issues are delivered over night via ftp and an automated process makes only those accessible where we have current subscriptions in HeBIS. Local hosting is without doubt a good solution but it is not the cheapest one.
  - In my opinion we are served best if we are allowed to access the journals in perpetuity via the publisher's server. This is very probably less costly than other solutions and the most comfortable way for our users. I would appreciate to have such an assent as standard term in our license agreements.

2. What happens with our access rights if the publisher doesn't continue to host the data? Publishing houses nowadays are owned by private equity companies. Mergers and takeovers have nearly become daily routine. Isn't this reason enough for the libraries to take the initiative themselves? Not necessarily, but we should plan ahead and make respective provisions for such situations in our contracts. The license for Oxford University Press journals states: *"Nothing ... requires the licensor to continue to host the material on its servers after the expiry of the subscription period or to make the material available in any other form to the licensee."*

The good news is, however, that the OUP journals are accessible via the Electronic Collections Online of OCLC. We should include OCLC as an integral part in our archiving system for electronic journals. When Academic Press was added into the Elsevier Empire OCLC was a last resort for those customers who have no contract with Elsevier. You can find OCLC's archival policy on the website.

The question of ongoing access to backfiles does not only arise when a license for a journals package is terminated or a publisher is going out of business. We have this problem very often on a much lower level, when single journals change publisher. We hardly noticed such changes in the print era. When an electronic journal changes publisher, the rights are normally transferred to the new publisher and the content is transferred to the platform of the new owner, backfiles included. Contractually agreed duties against licensees are not transferred. If you have a license with both the problem

is solved. If not, there is a situation where no license agreement refers to either as far as I know. There should be rules as laid down in the guidelines for good practice of the Association of Learned and Professional Society Publishers (ALPSP Advice Note No 18: When a Society changes publisher. 2002.):*“The guiding principle should be that the content should continue to be available, either from one or other publisher’s site or from a third party”*. These guidelines refer as well to journals packages licensed by consortia.

3. It is not sufficient to agree on continued access only, the extent of the archival access has to be agreed as well.

- Time period

There are in principal two options: Access to the content of all issues **published** during the license term or to publications **made available** prior to the date of termination. Licensees should try to get the second option accepted, especially if there is no statement on the extent of available archive years in the license.

- Coverage

There are three possibilities:

1. Access is restricted for each institution to the subscriptions they had paid for during the license term (ACS).
2. Access is opened to those journals which were available via cross access during the license term (Springer).
3. All journals are available (Blackwell, Kluwer, OUP)

Let’s turn towards databases. Unlike journals’ licenses contracts for databases don’t include permanent access as a rule. There is a network of responsibilities which doesn’t make things easier: the provider of the database, a software house, a distributor. Normally arrangements can be made if all competences are under one roof.

If there is a parallel CD-ROM edition some suppliers provide the most recent version as archive copy, which can be used with the same rights and restrictions as during the license period. It depends very much on the product, if it makes sense to offer outdated content to our users. Increasingly, online databases don’t have CD-ROM equivalents due to various functionalities like linking facilities. So we’ve got a problem.

Whilst it is questionable to retain bibliographic databases without updates, it is of great importance to gain permanent access to journals fulltext databases. Print subscriptions can be cancelled, if there is no embargo on the titles and the updating is acceptable. This demand is fully met with [journals@ovid](mailto:journals@ovid) which provides medical and psychological journals.

### Beginning and end of archive access rights

We must accept that providers set a minimum license period before licensees are granted archival rights. That is true for journals and data bases as well. It wouldn't be adequate to pay e.g. a license for one year online access to the OED, terminate the license and request the dictionary on CD-ROM. Where such deadlines are fixed, a license term of three years is the rule (OED, ACM).

Some publishers restrict the archival access to a certain time period, e.g. three years for a data base or five years for journals. It is something like a guarantee that the publications will be hosted on the publisher's server during this time or that replacements are looked after. I've no doubt that such periods could be extended after termination if there is further interest in the journals and the publisher is still in business. But it would be good to know if the data are hosted on the OCLC server as well.

That was the legal background.

Now let's consider the technical aspects.

If perpetual access to the publisher's server is granted, the publisher's system must be able to manage access to different time windows according to license periods and access rights. Some systems cannot provide such a feature yet (Project Muse, Springer LINK, IoPP). On the customer's side it is only necessary to advise the users that current years are not available. Links remain valid.

If only pdf files without functionality are delivered, a lot has to be done on the libraries' side: a database is required, navigation structures and an interface have to be developed. New links have to be created. This effort is worthwhile only if it is a question of vast amounts of data and a large number of potential users. To insist on a principal right is not a good enough reason.

If local hosting is the preferred option, you may license Elsevier's Science Server or a similar software, if any. It is possible to mount other products on this Server with special loader software for each publisher. I hope that Science Server users will co-operate internationally and exchange experiences and developments in this field. The software and the database require regular maintenance: new releases have to be implemented and tested, life spans and license periods of journals as well as access rights have to be controlled and corrected, claims have to be processed, claimed issues have to be loaded, each change of an ISSN has to be entered in the system. It is remarkable that despite automated processes issues are lacking on SDOS which are available on Elsevier's Server. We couldn't help establishing claims procedures exactly as in a print environment. Sometimes hardware crashes have to

be repaired. A very close co-operation between the computer centre and our office is required to manage the service.

Which costs are involved?

Anything is possible. Often license agreements don't specify costs in this area which doesn't mean that there will be in fact no charges. But some publishers really offer archive CD-ROMs at no extra costs. There will be no invoice from the provider but we have to pay 16% VAT on the value of the content to the customs office in Germany. Therefore we should try to get the data via ftp and not on physical media. Once the data are delivered this way of retaining access becomes rather costly in terms of hardware, software and staff time required to make the data accessible.

There are also publishers who provide permanent online access at no extra charge. This is, of course, the most desirable way.

Not seldom the terms "minimal fee" or "a fair and reasonable price" are used in licenses, not only for CD-ROMs, but for continuous online access via the publisher's server as well. A small technical fee for perpetual access is acceptable but the calculation of these costs should be transparent. Costs must be covered, of course, but there shouldn't emerge an additional profit margin. Only some providers are already very precise as far as prices for archival access are concerned.

One of the German consortia acquired archive data of Elsevier and Springer journals at a one-time fee, which are going to be loaded and made searchable on a central server. We'll wait and see how this experiment turns out.

The investment, which is necessary to make such archive files usable on your own server, is being solved if software like Science Server is already available and you have not to invent the wheel again. **But:** You must be able to afford that. The one-time license fee and the annual license for maintenance and updates are proportional to the level of Elsevier's journal prices. We proposed to Elsevier that our Science Server should be opened – at an appropriate fee - as Archive Server for members of other consortia in Germany who were not able to renew their license. We are still thinking that this could be a reasonable kind of co-operation. But we were really taken aback when we heard that Elsevier was only willing to agree to this project if each of the parties concerned signed a license and paid the list price. I think they misjudged the market completely in this case.

Of course, enough storage capacities must be available, but hardware costs are insignificant when compared to the maintenance fee. Labour costs for running the system can be fixed at about 30 (wo)mandays a year. We would be happy to be in the position to share the server with other consortia in order to solve some of the archiving problems.

## Conclusion

Archive data which are provided in some kind, are of course a matter of preservation, once we've got them. But there are so many activities and initiatives in the field of long-term-preservation that solutions can be expected. Hopefully different approaches complement each other, projects influence each other and experiences are exchanged. On the premise that technology will develop as fast as in the last two decades, the topic will, however, become a never ending story.

Regardless of a more or less secure future, librarians have to take decisions now, when a license is terminated. License agreements should be more precise on this point, and offer preferably continued access to journals via the publishers server, at no charge or against a specified small technical fee. To host archive data locally is only to be recommended if the technical and financial requirements are given.

Licenses must state exactly what happens with our archive rights if the publisher no longer hosts the data. There must be rules for continuous access rights, if a journal changes publisher.

The extent of archive access has to be agreed in terms of accessible years and covered titles as well as the beginning and the end of access rights.

In any case, but especially with databases, we should examine thoroughly if archive data are really needed.

To deal with licenses for electronic products is a sophisticated and sometimes difficult matter from the very beginning beyond the date, when the license is terminated. It is essential to cooperate in this field in order to set standards. German, Austrian and Swiss Consortia have an informal platform called GASCO (German, Austrian and Swiss Consortia Organisation) to change experiences and agree on strategies.

Margot Wiesner  
Stadt- und Universitätsbibliothek  
HEBIS-Konsortium  
Bockenheimer Landstrasse 134-138  
60325 Frankfurt  
Tel. ++49-69-21239238  
Fax: ++49-69-21239307  
<http://www.stub.uni-frankfurt.de>  
<http://www.hebis.de/hebis-konsortium/index.html>