

LICENSING PRIVACY: CONTRACTUAL LANGUAGE AND THE CHALLENGE OF MONITORING COMPLIANCE

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<https://publish.illinois.edu/licensingprivacy/>

Issue Briefing for the CNI FALL 2021 Meeting

Proposal Abstract

The Licensing Privacy initiative, made possible in part by a grant from The Andrew W. Mellon Foundation, aims to improve how academic libraries leverage licensing terms to advocate for reader privacy. In fall 2021, the Licensing Privacy initiative released: (1) "View from Library Leadership" presented findings from research on how patron privacy concerns are informing academic library leaders' strategies in negotiating with vendors, and (2) "The Vendor Contract and Policy Rubric" that can be used to evaluate how well a given vendor platform follows library privacy guidelines, standards, and best practices and guidance for how to use the rubric in advocating for privacy during vendor selection and contract negotiation.

Emergent from these projects is the recognition that libraries have limited capacity to monitor vendor compliance with license terms for user data privacy. What are possibilities (vendor attestation, audit, third-party certification, library testing, etc.) and what is feasible? This session will serve as an opportunity for a candid discussion of the challenges libraries face in licensing for privacy and needed resources and possibilities for approaches to monitoring compliance.

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EmergEd from Discussions at the *National Forum on Web Privacy and Web Analytics* (September 2018)

This community-fueled effort will enable our profession to take important strides toward a better analytics practice that protects our users' privacy from unwanted third-party tracking and targeting. Our goal is to produce a roadmap for enhancing our analytics practice in support of privacy.

<https://www.lib.montana.edu/privacy-forum/>



Pathway: Develop and Maintain Model License Language Re: User Privacy

- Established and successful past practice in librarianship
(e.g., <http://liblicense.crl.edu/licensing-information/model-license/>)
- Communicates priority of issue
- Facilitates communication and improves efficiency in negotiations

NEGOTIATING FOR WHAT WE WANT: A PROPOSAL FOR MODEL LICENSE LANGUAGE ON USER PRIVACY

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Katie Zimmerman, Scholarly Communications and Licensing Librarian, MIT Libraries

Issue Briefing for the CNI FALL 2018 Meeting

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 Licensing Privacy

[The Project](#) [Advisory Group](#) [Views from Library Leaders](#) [Assessing Contracts](#) [Upcoming Webinar](#)

The Project

Libraries are increasingly concerned about the ways in which users of library licensed resources are being tracked by the third-party providers of these resources. Efforts such as the [NISO Consensus Principles on Users' Digital Privacy in Library, Publisher, and Software-Provider Systems \(NISO Privacy Principles\)](#) laid a foundation for library and provider agreements on user control, data security and management, and transparency. However, researchers at [MIT](#), [the University of Minnesota](#), and [Temple University](#) have documented the extent of the data collection and capture that is happening on these third-party platforms. There are [concerns](#) as well that usage data is being aggregated and feeding into the commercial data sector and also being sold to advertisers and the like. In sum, [it is not possible for libraries to provide, in any meaningful way, assurance of anonymity or privacy](#) for those who are using library licensed resources given the current state of user tracking. For librarians, this is deeply troubling given our long-standing commitment to user privacy and confidentiality as embodied in this statement from the [ALA Code of Ethics](#): "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted."

This project, funded by the Mellon Foundation, seeks to use the power of library licensing agreements to effect change in third-party platform practices in order to bring them into alignment with library values of privacy, confidentiality, and respect for user control over their own data. It reflects an identified [Pathway for Action](#) from the IMLS-supported [National Web Privacy Forum](#). The goal is to develop model license language on user privacy that would support libraries in advocating for user privacy when contracting for services and content. By ensuring that user privacy is contractually protected in licensing agreements, service contracts, etc., libraries would be able to hold platforms accountable for their data practices.

For more information, contact Grant PI, [Lisa Janicke Hinchliffe \(ljanicke@illinois.edu\)](mailto:ljanicke@illinois.edu).

Fall 2018 → Fall 2019

Licensing Privacy Project

Supported by a grant from The Andrew W. Mellon Foundation

Theory of Impact: Seeks to use the power of library licensing agreements to effect change in third-party platform practices in order to bring them into alignment with library values of privacy, confidentiality, and respect for user control over their own data.

Planned Pre-Covid Development Process: Contract Language Review, Library Leader Interviews, Invitational Convening, Finalize Language, Disseminate Text and Toolkit

Actual Covid-Pivoted Development Process: Contract Language Review, White Papers (Library Leader Interviews, Vendor Policy and Contract Rubric, etc.), Webinars, Dialogue Sessions, Finalize Resources, Disseminate Resources

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Who?

PI:

- Lisa Janicke Hinchliffe

Consultants:

- Danielle Cooper, Ithaka S+R
- Becky Yoose, LDH Consulting Services
- <tbd>

Advisory Group:

- Ann Okerson, Senior Advisor on Electronic Strategies, Center for Research Libraries
- Katie Zimmerman, Director of Copyright Strategy, MIT Libraries
- Scott W.H. Young, User Experience & Assessment Librarian, Montana State University

The Vendor Contract And Policy Rubric

LDH Consulting Services

Rubric:

- Eight privacy domains
- Three privacy levels
- Does not generate a “total score”

Supplemental materials:

- Glossary
- Example contract language

Key Concept: Minimum Viable Privacy

- Exceeds Minimum Viable Privacy
- Meets Minimum Viable Privacy
- Does Not Meet Minimum Viable Privacy

Note: A vendor contract/product that meets or exceeds minimum viable privacy in one or more domains does not necessarily adequately protect user privacy.

Rubric Domains and Levels

Privacy Domains:

- Data collection
- User data rights
- Data disclosure
- Data processing
- Privacy policy
- Data ownership
- User surveillance
- Data security and accountability

Privacy Levels:

- Exceeds Minimum Viable Privacy
- Meets Minimum Viable Privacy
- Does Not Meet Minimum Viable Privacy

Note: A vendor contract/product that meets or exceeds minimum viable privacy in one or more domains does not necessarily adequately protect user privacy.

Rubric Excerpt

Vendor test name
Vendor test product

Data Disclosure

What data does the vendor share and with which parties? Why is the data shared, and how is data sharing controlled/determined?

<input type="checkbox"/> Exceeds Minimum Viable Privacy	<input type="checkbox"/> Meets Minimum Viable Privacy	<input type="checkbox"/> Does Not Meet Minimum Viable Privacy
<ul style="list-style-type: none"><input type="checkbox"/> Clearly explains what personal data is disclosed to specific third parties and provides business cases for disclosure.<input type="checkbox"/> Does not disclose personal data to law enforcement unless under court order.<input type="checkbox"/> Does not disclose or sell user data to data brokers and advertisers.	<ul style="list-style-type: none"><input type="checkbox"/> Describes what data is disclosed to third parties and business cases for disclosure.<input type="checkbox"/> Does not disclose personal data to law enforcement unless under court order.<input type="checkbox"/> Users can opt-in to data sharing with third parties.<input type="checkbox"/> Aggregates or otherwise de-identifies data before disclosing to third parties.	<ul style="list-style-type: none"><input type="checkbox"/> Does not list what data is disclosed to third parties.<input type="checkbox"/> Discloses user data to third parties without providing users an option to opt out.<input type="checkbox"/> Does not have a law enforcement request policy or the policy contradicts library and organizational policies.<input type="checkbox"/> Discloses or sells user data to advertisers or data brokers.

Notes

Add notes here

Data Disclosure Risks

What are the major patron privacy risks in this domain?

List risks here

How can we address these risks?

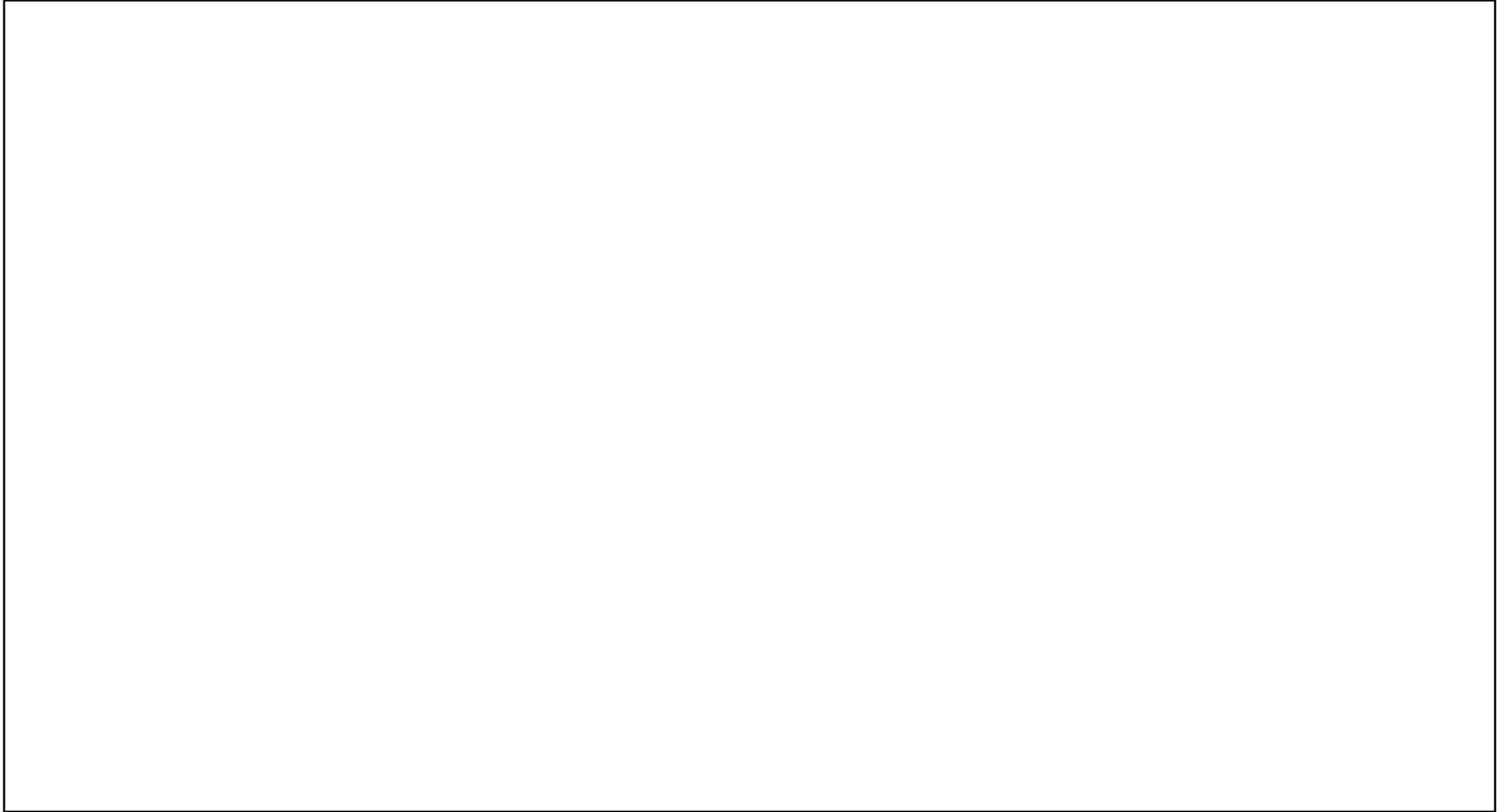
List ideas here

Possible Use Cases

- Internal discussion starter – use? adapt?
- Contract negotiations – information gathering? thresholds?
- Review privacy status – current resources? changes over time?
- Training tool – new acquisitions/collections employees? library school students?

Note:

Developed for an intended audience of academic libraries, members of the library business community have also begun using the rubric for product review and employee training.



Views from Library Leadership

Danielle Cooper

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The Interviews

We asked leaders about how privacy concerns inform their library's negotiations and agreements with vendors. During this phase we also conducted several exploratory interviews with librarians who support license negotiations to inform the planning for a later phase of inquiry.

Thank you to our participants:

- Kristin Antelman (University of California, Santa Barbara)
- Sara Bahnmaier (University of Michigan)
- Gerald R. Beasley (Cornell University)
- Joni Blake and Nora Dethloff (co-interviewed, Greater Western Library Alliance)
- Brandon Butler (University of Virginia)
- Mimi Calter (Stanford University, now at Washington University St. Louis)
- Ellen Dubinsky (University of Arizona)
- Tim McGeary (Duke University)
- Ken Varnum (University of Michigan)
- Sarah Shreeves (University of Arizona)

From the perspective of library leaders, there are limits to how much libraries can leverage licensing language to advocate for patron privacy.

Findings

Privacy in the priority stack

Experiences negotiating

Role of library policy

Common tactics

Ensuring compliance

Privacy in the priority stack

Even among the staunchest proponents was a recognition that the issue of privacy does not take precedence when negotiating licenses. This means that the gains that can be made for patron privacy through licensing language are usually modest.

Challenges:

- Libraries will continue to feel pressure to **prioritize what faculty want** for themselves and their students over any concerns with privacy terms
- A growing number of vendor offerings require library patrons to create **personal accounts** and libraries are still experimenting with the best intervention methods.
- There is greater opportunity when negotiating with **vendors of digital tools and platforms**, where the marketplace is more competitive than among more traditional publishers.

Experiences Negotiating



Relatively Painless

Because the goals around privacy-related interventions are typically modest, the requests result in **relatively little friction when negotiating** with vendors.



The Onus is on Libraries

There is a need to **remain ever-vigilant** as vendor privacy terms change with renewals. These changes seem to be happening with increasing frequency.



Government Policy is Important

Many states have outdated policies and/or their blanket terms are **overly draconian**, making it challenging for libraries to advocate.

The role of library policy

Successful licensing processes, including how language related to privacy is included in the terms, involves delegation and cooperation among those in the library. Library policies are therefore most valuable when they empower library staff to make decisions.

Challenges:

- **Carving out the time** and resources to regularly and meaningfully re-visit policies
- The issue of privacy on campus also extends beyond the library, which necessitates **working with other units** and centralized leadership
- Balancing **prescriptiveness** to inform negotiations with opportunities to use policy to as an educational tool with university stakeholders



Common Tactics

- Resist signing non-disclosure agreements
- Clarify which terms are being consented to
- Assert who can consent to the terms
- Clarify when and how user data can be shared
- Require notification in the event of a data breach

Ensuring Compliance

None of the libraries included in this study have specific staffing mechanisms in place to proactively monitor vendor compliance with licensing terms related to privacy. Any changes to the terms also make it more challenging for vendors to track their own compliance.

Challenges:

- One library in the study is using **web crawlers** to flag any changes to privacy terms posted on vendor websites between negotiations but of course that does not capture if the vendor is violating those terms.
- Compliance monitoring, especially as it relates to single sign on, would also ideally need to **involve staff in other campus units** with security responsibilities.

Ways Forward

Stay Current

Given that new privacy terms are perceived to be proliferating, a major challenge in developing model language is that it is quickly out of date.

Explore more **flexible approaches** to developing and collecting model language, such as through wikis or applying version numbers to term instances.

Go Broad

Licensing language has a narrow utility when advocating for privacy, so it is important that libraries also attend to other strategies.

Use **library policy** as an opportunity to create awareness among patrons and empower staff to make independent decisions when licensing.

Sarah Shreeves

Compliance Monitoring

Challenge: Libraries have limited capacity to monitor compliance with license terms for user data privacy.

Possibilities:

- Vendor Report/Attestation
- Third-Party Certification/Audit
- <???

Discussion:

- Feasible?
- Desirable?
- <???

THANK YOU

Questions?

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