

**Visible Justice**  
Evolving access to the law

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Workshop for  
Conference Registrants  
September 2002



**Creating the  
Virtual  
Library**

Presented by Jules Winterton

Institute of Advanced Legal Studies

2.00pm to 5.30pm  
Wednesday 11<sup>th</sup> September 2002

## Aim of the workshop

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## Structure of the workshop

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To provide an understanding of the key issues to be considered in creating and managing collections of electronic resources in libraries and some background to project design, funding and management.

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- Overview of Virtual and Hybrid Library models
- Project Proposals
- Identifying Costs
- Collection Management
  
- Case Study: Designing a system for the American Society of International Law
  
- Licensing
- Metadata
- Digital Preservation

## Overview of virtual libraries

1 of 2

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### Why virtual libraries?

- to avoid escalating costs
- to save space
- to provide remote access
- to improve resource discovery
- to increase range of available materials

as always ...

- to meet client needs



## Overview of virtual libraries

2 of 2

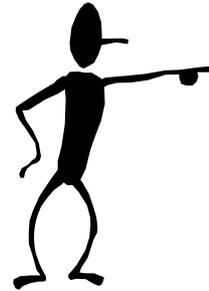
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- Hybrid not virtual libraries for research
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- Desktop access
- Cross-sector and cross-domain access
- International nature of modern research
- Sustainable electronic resources
- Interoperability and awareness of standards
- Electronic projects depend on collaboration
- E-libraries are expensive - savings depend on large-scale collaboration
- There are no local projects

## Project proposals 1 of 2

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*Where do we want to go?*



Projects take place in the context of:

- Government / sector policies
- Prevailing financial conditions
- Strategic aims of the institution
- Strategic aims of the library service
- Other projects

Making a project proposal –

*What are the key elements?  
What headings to use?*

## Project proposals

### 2 of 2

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*What are the elements of a project proposal?*

- Title and catchy name
- Duration of project
- Summary / outline description
- Background
- Significance of project
- Description of materials / collections
- Purpose of project
- Partners and collaborators
- Management of the project
- Milestones and annual targets
- Deliverables
- Standards including metadata standards
- Total cost and budget and other sources of funds
- Evaluation
- Dissemination
- Sustainability / exit strategy

Example headings from the Research Support Libraries Programme ([www.rslp.ac.uk](http://www.rslp.ac.uk)) funding application and applied to a variety of electronic projects

## Identifying Costs

### 1 of 2

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### ‘Budget’

- Is prepared to cover a defined period of time
- Is approved in advance of that period
- Combines qualitative, quantitative and fiscal information
- Defines processes to adopt to achieve organisational goals

### Funding - and diversification of funding sources

Carefully evaluate the resource, skill and funding requirements necessary to fulfil a well-defined project and locate and pursue the appropriate funding source

**Or**

Throw together a speculative proposal for every call or tender that contains the phrase ‘digital libraries’

### ‘Costs’

Isolation of cost elements for an electronic project (e.g. for a digitisation programme)

- Identify individual steps in process and how they relate
- Estimate volume and per item cost
- Estimate the duration of fixed costs

*What are the possible cost elements for a digitisation project?*

## Identifying Costs

### 2 of 2

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Identifying Costs = Identify Procedures

Example of costs of a digitisation project:

- Selection of materials
- Determine size of project
- Prepare information / documents
- Determine data capture /imaging requirements (benchmarking)
- Determine requirements for and create metadata
- Determine production / imaging costs
- Determine text conversion costs
- Determine SGML encoding costs
- Determine finding aid conversion costs
- Post-process quality checking
- Estimate additional local costs e.g.
  - Project management and tracking
  - Programming and system support
  - Shipping and insurance
  - Purchasing storage devices, media and software

from Research Library Group. *Worksheet estimating digital reformatting costs*. 2001

## Collection Management

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### Collection Management

- not just collection development
- also storage, access, de-selection, preservation

### Selection

⇒ mission, purpose, strengths, agreements

### Acquisition and Organisation

⇒ verification, cataloguing, classification, access control

### Storage and Access:

⇒ current / permanent storage, media refreshment, monitoring, disaster recovery, legal considerations

### Deselection and reformatting:

⇒ transformation, technology change, usage, benefit

“Deselection solely on the basis of use may be particularly risky” – not news for research libraries!

### examples:

- Bodleian Library, Oxford University  
<http://www.bodleian.ox.ac.uk/boris/guides/bod/colldev.htm>
- Digital Library Sunsite at Berkeley  
<http://sunsite.berkeley.edu/admin/collection.html>
- Policies from major research libraries at  
<http://www.curl.ac.uk/about/collpol.html>

## Designing a System

### Group work

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### Case Study of a Project

The American Society of International Law (ASIL) is a membership society of 4,300 individuals from over 100 countries. 25% of its members are non-US. 23% are academics, 19% are from law firms. It is dedicated to the study and practice of international law. Its revenues are from membership dues and key print publications in international law.

ASIL wants to ensure there is information resource provision in international law in the future and feels it can play a key role. It has a web site with some guides to international law topics and relevant news and opinions.

ASIL has been funded by the Mellon Foundation to explore a project to produce an Electronic Information System for International Law as a pilot to investigate the potential of scholarly societies to generate information resources in specialist subjects.

Please read sections I, II and III of the documentation of pages 38-40 and then discuss in groups the advantages and disadvantages of one of the scenarios outlined on pages 41-44. Then speculate on the possible mid- and long-term issues which may arise – what questions will need to be answered further down the line?

This is actual documentation used in the formative stage of the project.

When you have collected some ideas, please write the down for reporting when we reassemble. You may then like to look at the results of the original ASIL discussions on the last three pages of the documentation.



## Licensing 1 of 2

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### Ownership of material v. licensed access

A license is an agreement that describes the particular circumstances (who, when, where, how) under which a content owner and user agree on access and use of specified electronic content.

It is intended to be a statement of mutual understanding usually arrived at through negotiation.

### Is the license negotiable?

- Shrink-wrap or click through licenses

It is essential to read the license thoroughly and ask for changes if required otherwise:

- There may be loss of certain rights to uses of the resource that would otherwise be allowed under the law (for example, in the United States, such uses as fair use, interlibrary loan, and other library and educational uses);
- obligations to implement restrictions that are unduly burdensome or create legal risk for the institution; or,
- sudden termination of the contract due to inappropriate use by a member of the user community.

⇒ Yale University Library. Liblicense: licensing digital information: a resource for libraries.

<http://www.library.yale.edu/~license/index.shtml>

This site gives helpful information on license terminology and the pros and cons of particular language and a standard license agreement.

## Licensing

### 2 of 2

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#### Selection decisions:

- Content: does it fit with collection policy
- Frequency of updates? Dates of coverage?
- Does the library already have material in print? Discount?
- Price: annual site licence, per simultaneous user, per transaction?

#### Access

- is electronic access a real benefit?
- For whom: law school, university, walk-in users,...?
- Control: individual passwords or IP address; will the library need to provide information about users; confidentiality?
- Access to archival material if the subscription is terminated?
- Internet: is downtime scheduled and notified?
- CD-ROM: return of older version or is CD time-bombed?
- Can users download, print or email content?
- Can the library use the service to fill ILL requests?
- Will the library be absolved from liability for copyright infringement by third parties, e.g. students?

#### Support

- Will the publisher provide training?
- Will the publisher provide documentation?
- Will the publisher resolve IP issues?
- What is the publisher's policy on digital preservation?

Use a checklist to record details and assist in decision-making

⇒ NELLCO. Decision criteria worksheet for electronic acquisitions  
<http://www.nellco.org/general/criteria.htm>

## Metadata

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- What is metadata? Can you invent your own metadata?
- Do standards already exist?
  - For format of metadata e.g. MARC21, Dublin Core
  - For content of metadata e.g. AACR2, thesauri, schema
- UKOLN is a national focus of expertise in digital information management. It provides policy, research and awareness services to the UK library, information and cultural heritage communities. <http://www.ukoln.ac.uk/metadata/>
- Importance of collection descriptions to guide and map information e.g. <http://ials.sas.ac.uk/flag.htm> for descriptions of foreign law collections in UK libraries.
  - Dublin core
  - UKOLN collection description schema
  - legal publication form descriptions from USA
  - thesaurus originally used in Legal Journals Index
  - list of present and past jurisdictions

⇒ “The Semantic Web activity is a W3C project whose goal is to enable a 'cooperative' Web where machines and humans can exchange electronic content that has clear-cut, unambiguous meaning. This vision is based on the automated sharing of metadata terms across Web applications. The declaration of schemas in metadata registries advance this vision by providing a common approach for the discovery, understanding, and exchange of semantics. However, many of the issues regarding registries are not clear, and ideas vary regarding their scope and purpose. Additionally, registry issues are often difficult to describe and comprehend without a working example.” R.Heery & H.Wagner. D-Lib Magazine, v.8, no.5, May 2002. <http://www.dlib.org/dlib/may02/wagner/05wagner.html>

⇒ Seminar materials: <http://www.ukoln.ac.uk/web-focus/metadata/seminar-materials/>

## Digital Preservation

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- Establish responsibilities for digital preservation
- Create and maintain a detailed collection management policy
- Preservation is not an isolated activity
- Preservation decisions at creation or at least at acquisition
- Effective lifecycle management
- More expensive and intensive than preservation of traditional materials?

⇒ CEDARS = CURL Exemplars in Digital ARchiveS developing collection management policies to ensure long-term viability of digital resources. <http://www.leeds.ac.uk/cedars/>

⇒ *CEDARS guide to digital collection management*. March 2002 (also on web site)



*Thank You!*



## ***Appendix 1***

### Recruitment

#### Large impact of recruitment

- Small number of staff
- Pressure of time
- Particular skill sets e.g. technical knowledge

'Russian Roulette with five bullets and the funders insisting you pull the trigger because the time is ticking on the project'

#### Qualities

- [Technical skills]
- Team player for institution and for project
- Requires minimal supervision
- Networker
- Uses their skills to help other projects without gain
- Promotes institution as part of project
- Does not object to travel and overnight stays
- Good communicator
- Good written and verbal local language
- Timely and relevant with deliverables
- Identifies and grabs opportunities for institution
- Genuinely productive i.e. 'working not talking about working'
- Correctly motivated i.e. politically orientated to support project and institution rather than their own career

Management and administration underestimated!

(results of a survey of digital library centres in *Establishing a digital library centre* by John Kirriemuir. *Ariadne*, issue 29, October 2001, <http://www.ariadne.ac.uk/issue29/kirriemuir>)

## ***Appendix 2***

### Digitisation: A Project Planning Checklist Arts and Humanities Data Service

#### Contents

1. Introduction
2. Project design
3. Project implementation
4. Long-term maintenance and use
5. Appendix. Estimating digital reformatting costs

1. Introduction. - The document offers practical guidance to those considering a digitisation project. It takes the form of a check-list of strategic issues which need to be addressed in a project's design phase. The issues follow the life course of a digital resource from its inception through to its development, maintenance and use. It does so because decisions taken about a digital resource at any one stage of its life will have ramifications for decisions which will be or have been taken about it at other stages.

2. Project design - Critical to the success of any project, the planning phase will determine whether, how, and at what cost digital resources are created and, critically, how those resources, once created, will be used. Issues that need to be addressed include:

1. Why digitise? A simple but essential cost-benefit analysis which may involve:

- a clear and precise statement of what any digitisation project is trying to achieve
- a clear understanding of the potential benefits it will offer and to whom they will be offered
- a clear understanding of the needs of intended user communities
- a clear understanding of the costs involved in not conducting a digitisation project
- a survey of complementary digital resources and digitisation projects that may complement (or make redundant) the digitisation project being considered

2. What to digitise? - Where digitisation projects entail the production of digital surrogates for items within existing collections, an element of selectivity is involved. That selectivity should be guided by clear and consistently applied criteria which may take account of:

- a project's aims (which items or collection of items, when digitised, will support these best)

- what items are most readily available for digitisation (availability may be restricted, for example, by copyright or by their physical media)
  - items for which digital surrogates already exist elsewhere for acquisition (e.g. by purchase, subscription, etc)
3. What technologies?- An initial review of the technical requirements that will ensure a digital resource actually serves the purposes for which it is made. The review may take account of the following with regard to the creation, management, and delivery or use of a data resource:
- network, hardware and software requirements
  - technical standards (e.g. file formats, encoding methods, compression techniques)
4. What costs and what funding? - Having defined the aims, content, and technical aspects of a digitisation project it should be possible to estimate costs and to assess how and from what source(s) these may be met. (See the [Appendix](#) which supplies a costing model for use by managers of projects digitising paper-based information.)
3. Project implementation - Although implementation is largely a technical and administrative matter, it is essential that techniques and administrative practices are suited to a project's aims and to the funding and technologies available to it. Accordingly, implementation strategies need to be assessed as part of project design.
1. How to make the data? - This phase will involve review and selection of data creation strategies (e.g. OCR, keyboard entry, digital photography, conducted in-house, contracted out, etc.) and related hardware and software. The review will also involve selection of those standards and best practices that will help digitisation projects maximise their achievements while minimising their costs. Standards and best practices deserve especial consideration because they are bewildering to most. Selection will depend in part on what kind of data resource is being created (standards appropriate for digital images are different than those appropriate for electronic texts or GIS), and in part on the uses to which a data resource is intended to be put (imaging standards appropriate for web-delivery of thumbnails are different than those used for archive-quality digital reproductions). There are also different kinds of standards which serve very different purposes as follows:
- Technical standards facilitate data interchange across networks and between platforms with minimal loss in content and functionality. Such standards include those pertaining to file formats, and compression and encoding techniques.
  - Data documentation standards facilitate data resources' management and meaningful interchange between individuals and organisations. Such standards include MARC, Dublin Core, and the CIMI (Computer Information of Museum Information) standard.
  - Controlled vocabularies and other standards help to ensure that data resources are comparable with other like resources. Such standards include Anglo-American Cataloguing Rules (AACR2), the UK

Registrar General's occupational classification scheme, the Getty's Art and Architecture Thesaurus.

- Best practices are the constellation of technical, documentation, and data standards and of implementation strategies which promise to maximise a resource's intended usefulness while minimising the cost of its creation and subsequent management and use, and exist for data resources constructed for particular purposes (e.g. practices documented by Anne Kenney for preservation quality images of printed texts, Text Encoding Initiative's Guidelines for the use of SGML with electronic texts).
2. Where/how to store the data? - Data once created need to be managed on a day-to-day basis. How and where data are stored will be determined by how, and how frequently, they are intended for use. A number of storage/use scenarios exist and need to be considered in a project design phase. They include:
- data warehoused off-line on behalf of some third party and only "delivered" to that third party in the event of their experience of some unrecoverable corruption or data loss (typical of data warehouses)
  - data stored off- or near line and only distributed to users upon request, either via pre-arranged network transmission procedure or on some hand-held object (e.g. on magnetic tape, diskette, CD-ROM, etc.)
  - data stored on-line and distributed (via anonymous file transfer or the worldwide web) or browsed/analysed (e.g. via a Telnet connection or the worldwide web) in real time over some network and in real time
  - mixed distribution scenarios involving some combination of those described above
3. How to find the data? - Data resources need somehow to be located in order that they may be used. What information is available will depend upon what documentation standards are adopted. How information is made available will depend upon users' resource discovery requirements and the tools selected to meet them. Amongst the tools that may be provided are:
- resource discovery agents such as Alta Vista or Yahoo which allow simple key-word searching across the contents of web-accessible documents;
  - logically ordered web-accessible gateways which provide hypertext (Web) links to on-line data resources;
  - on-line catalogues which allow users to progress structured queries against comparably structured resource descriptions;
  - mixed scenarios which integrate two or more of those described above.
4. How to get the data? - How data are delivered to and used by end users will be contingent upon how and why they were created or acquired, how they are stored (e.g. on-, near- or off-line), and upon what software and hardware is needed to access them. User scenarios may include:

- resources are accessed on-line using client/server technologies and the collection managers manage the server (e.g. resources accessed by standard web browsers, Telnet sessions, etc.);
- resources are accessed on-line using client/server technologies and the collection managers do not manage the server (e.g. resources which are included in a collection but served to users by a third-party under the terms of some service agreement);
- resources and appropriate software are both resident on a workstation to which the user has direct access (e.g. a plug-and-play CD-ROM product, a digital text or database mounted locally on a user's desktop and accessed via analytical software also mounted on that desktop);
- mixed scenarios combining two or more of those described above.

4. Long-term maintenance and use - Having created a digital resource project managers will want to ensure it is used and maintained effectively. Data usage, support, and maintenance practices will be highly contingent upon why data were created in the first place and chosen to suit a digitisation project's aims. Accordingly, they need to be considered as part of the project design phase.

1. Overcoming obstacles to use. Technologies are arguably changing more rapidly than scholarly culture. Accordingly, some digital resources may remain under-utilised for a time after they are created. Obstacles to use that may need to be overcome include:
  - lack of awareness about the existence of particular resources
  - lack of awareness in general about how such resources may be exploited effectively for scholarly purposes
  - lack of relevant IT skills and/or analytical methods
  - lack of appropriate user support.
2. How to preserve the data? - Data resources are typically very expensive to develop. Investment, however, may be repaid if the data can be made available without content loss despite changes in hardware, software, and network technologies. Long-term preservation may be achieved by a number of means either in house or through deposit with some archive facility. However it is achieved, the prospects for and costs of long-term preservation will be determined to a large extent by decisions taken during a project's design phase. Strategies for preserving data include:
  - preserving the data and the hardware and software platforms from which they are originally made accessible;
  - refreshing data by copying them periodically onto new storage media;
  - migrating data through changing technical regimes by rendering them into an appropriate standard interchange formats;
  - emulating the look and feel of the original data on successive generations of hardware and software platforms.

3. How to administer the data? - Managing a digital resource over the long-term involves a degree of administration which needs to be planned from the outset. Consideration may need to be given to version control, order processing, and rights management and protection.
4. Distributing the data to recover their creation and maintenance costs - Owing to the costs involved in digitisation, whether and to what extent a data resource may be used to generate revenues are becoming key issues in project planning. How to design and implement cost recovery models is accordingly a concern in the long-term maintenance of any digitisation project.

Appendix. Estimating digital reformatting costs *based on Research Libraries Group, Worksheet Estimating Digital Reformatting Costs ( 1997 (revised May 1998, updated July 2001)*

### **Ten step programme**

#### 0. Selection of materials

- Identify materials (Determine legal restrictions). Investigate the availability of digital and other versions
- Eliminate items which are in poor condition or incomplete (Determine appropriate conversion process e.g. film, then scan, disband originals etc.)
- Calculate staff time for selection of materials = **cost 1**

#### 1. Determine the size of the collection

- Count number of titles, volumes and pages to be imaged, from bound or unbound documents
- Count number of frames, fiche or reels of micro-images to be converted
- Count number of finding aids required

#### 2. Prepare documents

- Retrieve documents from storage
- Remove documents from circulation
- Record physical condition of documents
- Collate and identify missing pages and damage
- Repair and replace missing or illegible pages
- Prepare intermediates (e.g. photocopies, transparencies)
- Disband originals (when required)
- Create documentation for bibliographic control, indexing, tagging and encoding information (when required)
- Calculate staff time for preparing documents = **cost 2**

### 3. Determine imaging requirements (benchmarking)

- Assess essential document attributes to determine scanning requirements (resolution, bit depth, enhancements, file format, compression)
- Confirm results by scanning a sample
- Perform inspection of sample on screen and in print
- Calculate staff time for benchmarking = **cost 3**

### 4. Determine requirements for and create metadata

- Create catalogue entries for digital resources
- Determine file naming and structuring strategies (e.g. individual images cf. Groups of images)
- Create additional indexes (e.g. index at article level for journal literature) or revise/enhance existing finding aids
- Calculate staff time for preparing metadata = **cost 4**

### 5. Determine imaging costs

- Assess costs of external or internal service providers = **cost 5**

### 6. Determine text conversion costs

- Define nature and extent of text conversion (e.g. full-text of all or specific documents)
- Assess costs of external or internal service providers = **cost 6**

### 7. Determine SGML encoding costs

- Define nature and extent of coding and accuracy requirements
- Assess costs of external or internal service providers = **cost 7**

### 8. Determine Finding Aid Conversion costs

- Define nature and extent of finding aid conversion and encoding
- Assess costs of external or internal service providers = **cost 8**

### 9. Post-process quality checking

- Load digital files
- Conduct data integrity checks
- Perform on-screen and paper inspection
- Ascertain accuracy and consistency of file naming , structuring, text conversion and encoding
- Integrate corrections into the digital file sequence

- Create derivatives for network access
- Calculate staff time and non-personnel costs (e.g. hardware) for quality checking = **cost 9**

## 10. Estimate additional local costs

- Project management and tracking
- Programming and systems support
- Shipping and insurance
- Purchasing storage devices, media and software
- Other
- Total = **cost 10**

Total cost = Costs (1-10) + (Indirect costs)

## Appendix 3

### Digital Library SunSITE Collection and Preservation Policy <http://sunsite.berkeley.edu/admin/collection.html>

#### Introduction

A collection policy is a standard library practice for publicly declaring a library's intent for breadth and depth of the material it will collect within certain subject areas, genres, or physical formats. Such declarations are useful tools that scholars can use to determine the relative utility of a collection for their purposes, as well as to assist in cooperative collection development with other libraries.

A preservation policy states criteria by which materials in danger of loss through physical decay, orphaned formats, etc. are selected for preservation. In the case of the Digital Library SunSITE, materials can be selected for preservation at any point; once selected, The Library of the University of California, Berkeley, commits to making certain that the information is preserved *in some form* by a reputable institution on a permanent basis. For more information on digital preservation issues, see [Preserving Digital Information: Report of the Task Force on Archiving of Digital Information](#), commissioned by the [Commission on Preservation and Access](#) and the [Research Libraries Group](#), May 1, 1996.

#### Print-Based Collecting Levels<sup>1</sup>

Typical collection development categories for print collections include such categories as:

- **Comprehensive** - A collection in which a library endeavors, so far as is reasonably possible, to include all significant works of recorded knowledge (publications, manuscripts, other forms), in all applicable languages, for a necessarily defined and limited field.
- **Research** - A collection which includes the major published source materials required for dissertations and independent research, including materials containing research reporting, new findings, scientific experimental results, and other information useful to researchers. It also aims to include all important reference works and a wide selection of specialized monographs, as well as a very extensive collection of journals and major indexing and abstracting services in the field.
- **Study** - A collection which is adequate to support undergraduate and most graduate course work; that is, which is adequate to maintain knowledge of a subject required for limited or generalized purposes, of less than research intensity.
- **Basic** - A highly selective collection which serves to introduce and define the subject and to indicate the varieties of information available elsewhere.
- **Minimal** - A subject in which few selections are made beyond very specific works.

These designations place the collecting activities of a particular library within a continuum of collection upon which other libraries can also be placed. In so doing one can determine which library is attempting to be the library of last resort in a particular field and which is supporting only a minimal level of use.

The Berkeley Digital Library SunSITE collects (see below for the different levels of digital collection) at the **research level** in the areas of **digital library development** and **information technology**. In other subject areas, the resources and projects we select are reviewed by the appropriate selector for that discipline and gauged against our existing collecting levels for print publications in that area.

## Additional Digital Collecting Levels

Print-based collecting level designations are still useful within the digital realm, but for digital collections even more information is required. The very idea of "collecting" is, for example, an issue. What comprises "collecting"? At the Digital Library SunSITE we propose four levels of collecting, which may also include designation of preservation commitment. For more information on each collecting level, follow the link for each level. Each collection level is preceded by the image that is used throughout the SunSITE to show to which level a particular item is assigned.

### **Archived**

The material is hosted here, and The Library intends to keep the intellectual content of the material available on a permanent basis.

### **Served**

The material resides here, but The Library has not (yet) made the level of commitment to keeping it available that it has for "archived" materials.

### **Mirrored**

A copy of material residing elsewhere is hosted here, and The Library makes no commitment to archiving. Also, an institution other than The Library has primary responsibility for the content and its maintenance.

### **Linked**

The material is hosted elsewhere and The Library points to it at that location. Therefore the Library has no control over the information.

Material in any category except Archived may be re-designated from one level to another as required to meet changing information needs, remote server accessibility or responsiveness, local resource demands, etc. Material that receives the Archived designation cannot be downgraded to a lower status.

## Preservation Review Procedure

Collections or collection items will be reviewed by the appropriate library selector and others as necessary before receiving the Archived designation. Any collection or collection item that has achieved archived status will be so designated with this graphic: . Questions about specific collections or collection items should be directed to the SunSITE Project Manager at [manager@sunsite.berkeley.edu](mailto:manager@sunsite.berkeley.edu).

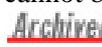
<sup>1</sup> Based upon *Collection Development Policy Statement* Preliminary edition, January 1980. Prepared by Dorothy Koenig and Sheila Dowd. The General Library, University of California, Berkeley.

## Archived Collection Level

This document describes a particular collecting level for the Digital Library SunSITE. For an overview of the collecting and preservation levels see the [Digital Library SunSITE Collection and Preservation Policy](#).

### Archived Designation

The Archived designation denotes material that is hosted on the Digital Library SunSITE, and for which The Library of the University of California, Berkeley makes a commitment to keep the intellectual content of the material available in some form on a permanent basis. Information on the SunSITE can be upgraded to Archived status at any time, but once it has achieved such status it cannot be downgraded. Items or collections designated as Archived are denoted by this graphic:

. Responsibility for maintaining access to archived items or collections may be passed on to major national digital archives if and when such organizations become available. Refer to [Preserving Digital Information: Report of the Task Force on Archiving of Digital Information](#) for more information.

## Levels of Access to Archived Material

There are three levels of access to SunSITE collections that have received Archived designation. Which level is appropriate at any one time is dependent upon a number of factors, including perceived need for the information, local server load, storage capacity, replication in other locations or formats, etc. The levels of access are:

- **Online** - Mounted on hard disk. The default level of access unless otherwise noted.
- **Near-Line** - Mounted on tertiary storage devices such as robotic tape drives, optical jukeboxes, etc. that can be accessed with a small delay in response.
- **Off-Line** - Stored on media not immediately accessible to an online user; for example: unmounted disks, acid-free paper, etc.

## Review Criteria for Assigning Archived Status

The following characteristics are considered when deciding to assign Archival status to Digital Library SunSITE material.

- Perceived usefulness of the material
- Perceived life-span of the material (is it likely to always be of significance?)
- Availability of the material elsewhere (Is the SunSITE the only location that is hosting it?)
- Uniqueness of the material (Are we the only institution that **can** host the material? e.g., primary sources)
- Commitment by another institution to archive the material

## Preservation Review Procedure

Collections or collection items will be reviewed by the appropriate library selector and others as necessary before receiving the Archived designation. Any collection or collection item that has achieved archived status will be so designated with this graphic:  Questions about specific collections or collection items should be directed to the SunSITE Project Manager at [manager@sunsite.berkeley.edu](mailto:manager@sunsite.berkeley.edu).

## Served Collection Level

This document describes a particular collecting level for the Digital Library SunSITE. For an overview of the collecting and preservation levels see the [Digital Library SunSITE Collection and Preservation Policy](#).

## Served Designation

The Served designation denotes material that is hosted on the Digital Library SunSITE, but for which The Library of the University of California, Berkeley has not (yet) made a commitment to maintain the intellectual content in some form as long as it is useful and necessary (Archived Level). Items or collections designated as Served are denoted by this graphic: 

Information designated as Served can be upgraded to Archived status at any time, at which point it cannot be downgraded in status. For information on the criteria used to review material for assigning Archived status, see [Archived Collection Level](#).

## Review Criteria for Assigning Served Status

The following characteristics are considered when deciding to assign Served status (mounting information locally) rather than [Mirrored](#) or [Linked](#):

- Availability of the information elsewhere (Is it hosted on another server?)
- Accessibility of the information elsewhere (How easy it is for users to find what they need? Is the site slow or frequently inaccessible?)
- Relevance to the Digital Library SunSITE mission (Does it support the development of digital libraries?)

## Mirrored Collection Level

This document describes a particular collecting level for the Digital Library SunSITE. For an overview of the collecting and preservation levels see the [Digital Library SunSITE Collection and Preservation Policy](#).

### Mirrored Designation

The Mirrored designation denotes material that is served from the Digital Library SunSITE, but the primary copy of the material is hosted elsewhere and some other institution has primary responsibility for the material and its maintenance. Items or collections designated as Mirrored are denoted by this graphic: 

### Review Criteria for Assigning Mirrored Status

The following characteristics are considered when deciding to assign Mirrored status (mounting information locally) rather than [Linked](#):

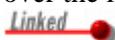
- Accessibility of the information elsewhere (Is the remote site slow or frequently inaccessible?)
- Relevance to the Digital Library SunSITE mission (Does it support the development of digital libraries?)
- Is it a resource of sufficient quality to merit mounting locally?

## Linked Collection Level

This document describes a particular collecting level for the Digital Library SunSITE. For an overview of the collecting and preservation levels see the Digital Library SunSITE Collection and Preservation Policy.

### Linked Designation

The Linked designation denotes material that is not hosted on the Digital Library SunSITE, but for which we provide a link to on a remote site. Therefore, the Digital Library SunSITE has no control over the information. Items or collections designated as Linked are denoted by this graphic:



### Review Criteria for Assigning Linked Status

The following characteristics are considered when deciding to link to a remote resource:

- Accessibility of the information elsewhere (Is the remote site easily accessible?)
- Relevance to the Digital Library SunSITE mission (Does it support the development of digital libraries?)
- Is it a resource of sufficient quality to merit a link?

## **Appendix 4**

### ***Principles for Licensing Electronic Resources***

**American Association of Law Libraries / American Library Association  
Association of Academic Health Sciences Libraries / Association of Research Libraries  
Medical Library Association / Special Libraries Association**

<http://www.arl.org/scomm/licensing/principles.html>

1. A license agreement should state clearly what access rights are being acquired by the licensee-- permanent use of the content or access rights only for a defined period of time.
2. A license agreement should recognize and not restrict or abrogate the rights of the licensee or its user community permitted under copyright law. The licensee should make clear to the licensor those uses critical to its particular users including, but not limited to, printing, downloading, and copying.
3. A license agreement should recognize the intellectual property rights of both the licensee and the licensor.
4. A license agreement should not hold the licensee liable for unauthorized uses of the licensed resource by its users, as long as the licensee has implemented reasonable and appropriate methods to notify its user community of use restrictions.
5. The licensee should be willing to undertake reasonable and appropriate methods to enforce the terms of access to a licensed resource.
6. A license agreement should fairly recognize those access enforcement obligations which the licensee is able to implement without unreasonable burden. Enforcement must not violate the privacy and confidentiality of authorized users.
7. The licensee should be responsible for establishing policies that create an environment in which authorized users make appropriate use of licensed resources and for carrying out due process when it appears that a use may violate the agreement.
8. A license agreement should require the licensor to give the licensee notice of any suspected or alleged license violations that come to the attention of the licensor and allow a reasonable time for the licensee to investigate and take corrective action, if appropriate.
9. A license agreement should not require the use of an authentication system that is a barrier to access by authorized users.
10. When permanent use of a resource has been licensed, a license agreement should allow the licensee to copy data for the purposes of preservation and/or the creation of a usable archival copy. If a license agreement does not permit the licensee to make a usable preservation copy, a license agreement should specify who has permanent archival responsibility for the resource and under what conditions the licensee may access or refer users to the archival copy.
11. The terms of a license should be considered fixed at the time the license is signed by both parties. If the terms are subject to change (for example, scope of coverage or method of access), the agreement should require the licensor or licensee to notify the other party in a timely and reasonable fashion of any such changes before they are implemented, and permit either party to terminate the agreement if the changes are not acceptable.
12. A license agreement should require the licensor to defend, indemnify, and hold the licensee harmless from any action based on a claim that use of the resource in accordance with the license infringes any patent, copyright, trade-mark, or trade secret of any third party.

13. The routine collection of use data by either party to a license agreement should be predicated upon disclosure of such collection activities to the other party and must respect laws and institutional policies regarding confidentiality and privacy.
14. A license agreement should not require the licensee to adhere to unspecified terms in a separate agreement between the licensor and a third party unless the terms are fully reiterated in the current license or fully disclosed and agreed to by the licensee.
15. A license agreement should provide termination rights that are appropriate to each party.

## Appendix 5

### Standard License Agreement

Yale University Library. Liblicense: licensing digital information  
<http://www.library.yale.edu/~license/index.shtml>

**Notes:** (1) Information that must be filled in by the parties to the agreement and will vary from case to case is enclosed in brackets ("[]").

(2) For some sections, the parties will select one or more, but usually not all, of the paragraphs within that section. Where this is the case, there is an instruction in *Bold Italics*.

This License Agreement (this "Agreement") is made effective as of [date] (the "Effective Date") between [Publisher, - Address of Publisher, City of Publisher, State of Publisher, Country of Publisher Postal Code of Publisher] ("Licensor") and [Licensee, Address of Licensee, City of Licensee, State of Licensee, Country of Licensee Postal Code of Licensee] ("Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### **I. Content of Licensed Materials; Grant of License**

The materials that are the subject of this Agreement shall consist of [electronic information published or otherwise made available by Licensor] (hereinafter referred to as the "Licensed Materials").

Licensee and its Authorized Users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor and/or its suppliers. Neither Licensee nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and the right to provide the Licensed Materials to Authorized Users in accordance with this Agreement.

#### **II. Delivery/Access of Licensed Materials to Licensee**

Licensor will provide the Licensed Materials to the Licensee in the following manner:

***{Include all that apply; delete those that do not:}***

**Network Access.** The Licensed Materials will be stored at one or more Licensor locations in digital form accessible by telecommunications links between such locations and authorized networks of Licensee.

**Physical Media.** Copies of the Licensed Materials will be provided to the Licensee on physical media (e.g., Digital Video Disk, CD-ROM, digital tape) for use on Licensee's network and workstations.

**File Transfer.** Copies of the Licensed Materials will be provided to the Licensee through electronic transfer (by means of File Transfer Protocol or otherwise).

#### **III. Fees**

Licensee shall make payment to Licensor for use of the Licensed Materials pursuant to the terms set forth in Appendix A, attached hereto.

*{Note: Pricing can follow any one of a number of models, include a fee per use of the Licensed Materials, a fee based on the number of Authorized Users, a periodic subscription fee or a fee based on the number of Full-Time Equivalent (FTE) students, faculty, employees or persons served by the License.}*

#### **IV. Authorized Use of Licensed Materials**

**Authorized Users.** "Authorized Users" are:

Persons Affiliated with Licensee. Full and part time students and employees (including faculty, staff, affiliated researchers and independent contractors) of Licensee and the institution of which it is a part, regardless of the physical location of such persons.

Walk-ins. Patrons not affiliated with Licensee who are physically present at Licensee's site(s) ("walk-ins").

**Authorized Uses.** Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and international law. Nothing in this Agreement is intended to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Licensed Materials.

The Licensed Materials may be used for purposes of research, education or other non-commercial use as follows:

Display. Licensee and Authorized Users shall have the right to electronically display the Licensed Materials.

Digitally Copy. Licensee and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials.

Print Copy. Licensee and Authorized Users may print a reasonable portion of the Licensed Materials.

Recover Copying Costs. Licensee may charge a fee to cover costs of copying or printing portions of Licensed Materials for Authorized Users.

Archival/Backup Copy. Upon request of Licensee, Licensee may receive from Licensor and/or create one (1) copy of the entire set of Licensed Materials to be maintained as a backup or archival copy during the term of this Agreement or as required to exercise Licensee's rights under Section XIII, "Perpetual License", of this Agreement.

Course Packs. Licensee and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials.

Electronic Reserve. Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by Licensee and/or its parent institution.

Databases. If the Licensed Materials are a database, compilation, or collection of information, Authorized Users shall be permitted to extract or use information contained in the database for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

Electronic Links. Licensee may provide electronic links to the Licensed Materials from Licensee's web page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed Materials to Authorized Users. Licensor staff will assist Licensee upon request in creating such links

effectively. Licensee may make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by Licensor.

Caching. Licensee and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

Indices. Licensee may use the Licensed Materials in connection with the preparation of or access to integrated indices to the Licensed Materials, including author, article, abstract and keyword indices.

Scholarly Sharing. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User's own scientific, scholarly and educational works.

Interlibrary Loan. Licensee may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC 108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

#### **V. Access by and Authentication of Authorized Users**

Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the following:

*{Include all that apply; delete those that do not:}*

IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensor.

Passwords. Authorized Users shall be identified and authenticated by the use of usernames and passwords assigned by Licensee. Licensee shall be responsible for issuing and terminating passwords, verifying the status of Authorized Users, providing lists of valid passwords to Licensor and updating such lists on a regular basis.

Public keys/Certificates. Authorized Users shall be identified and authenticated by means of public-key and X.509 certificates.

Developing Protocols. Authorized Users shall be identified and authenticated by such means and protocols as may be developed during the term of this Agreement.

#### **VI. Specific Restrictions on Use of Licensed Materials**

Unauthorized Use. Except as specifically provided elsewhere in this agreement, Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

Modification of Licensed Materials. Licensee shall not modify or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes. Other than as specifically permitted in this Agreement, Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

## **VII. Licensor Performance Obligations**

**Availability of Licensed Materials.** Within [time period], Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

**Documentation.** Licensor will provide and maintain help files and other appropriate user documentation.

**Support.** Licensor will offer activation or installation support, including assisting with the implementation of any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax *during [time period]* for feedback, problem-solving, or general questions.

**Training.** Licensor will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensor software.

**Quality of Service.** Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licensor shall use reasonable efforts to provide continuous service with an average of [percentage] up-time per month. The [percentage] down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

**Notification of Modifications of Licensed Materials.** Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted from by Licensor and/or that portions of the Licensed Materials may migrate to other formats. Licensor shall give prompt notice of any such changes to Licensee. Failure by Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by Licensee. If any modifications render the Licensed Materials less useful to the Licensee or its Authorized Users, the Licensee may treat such modifications as a material breach subject to the Early Termination provisions of this Agreement below.

**Completeness of Content.** Where applicable, Licensor will inform Licensee of instances where online content differs from the print versions of the Licensed Materials.

Where applicable, Licensor shall use reasonable efforts to ensure that the online content is at least as complete as print versions of the Licensed Materials, represents complete, accurate and timely replications of the corresponding content contained within the print versions of such Materials, and will cooperate with Licensee to identify and correct errors or omissions.

**Continued Training.** Licensor will provide regular system and project updates to Licensee as they become available. Licensor will provide additional training to Licensee staff made necessary by any updates or modifications to the Licensed Materials or any Licensor software.

Notice of "Click-Through" License Terms or Other Means of Passive Assent. In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), or otherwise attempts to impose such terms on Authorized Users through mere use or viewing of the Authorized Materials, Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall such terms materially differ from the provisions of this Agreement. In the event of any conflict between such terms and this Agreement, the terms of this Agreement shall prevail.

Compliance with Americans with Disabilities Act. Licensor shall comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, voice-activated input, and alternate keyboard or pointer interfaces in a manner consistent with the Web Accessibility Initiative Web Content Accessibility Guidelines, which may be found at <http://www.w3.org/WAI/GL/#Publications>.

Withdrawal of Licensed Materials. Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. Licensor shall give written notice to the Licensee of such withdrawal no later than [time period] following the removal of any item pursuant to this section. If any such withdrawal renders the Licensed Materials less useful to Licensee or its Authorized Users, Licensor shall reimburse Licensee in an amount that the withdrawal is proportional to the total Fees owed by Licensee under this Agreement.

Usage Data. Licensor shall provide to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users in conformance with the *Guidelines for the Statistical Measures of Usage of Web-Based Indexed, Abstracted, and Full Text Resources* (November 1998), adopted and approved by the International Consortium of Library Consortia.

### **VIII. Licensee Performance Obligations**

Provision of Notice of License Terms to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.

Protection from Unauthorized Use. Licensee shall use reasonable efforts to inform Authorized Users of the restrictions on use of the Licensed Materials. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate such Authorized User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee may terminate such Authorized User's access to the Licensed Materials upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing reasonable notice to Licensee (in no event less than [time period]) and cooperating with the Licensee to avoid recurrence of any unauthorized use.

Maintaining Confidentiality of Access Passwords. Where access to the Licensed Materials is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Licensee shall also maintain the confidentiality of any institutional passwords provided by Licensor.

### **IX. Mutual Performance Obligations**

Confidentiality of User Data. Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may

be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. 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.

Implementation of Developing Security Protocols. Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

#### **X. Term**

This Agreement shall continue in effect for [length of time]- commencing on the Effective Date.

#### **XI. Renewal**

This Agreement shall be renewable at the end of the current term for a successive [length of time] term unless either party gives written notice of its intention not to renew [time period] before expiration of the current term.

#### **XII. Early Termination**

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have [time period] from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the [time period], the non-breaching party shall have the right to terminate the Agreement without further notice.

Upon Termination of this Agreement for cause online access to the Licensed Materials by Licensee and Authorized Users shall be terminated. Authorized copies of Licensed Materials may be retained by Licensee or Authorized Users and used subject to the terms of this Agreement.

In the event of early termination permitted by this Agreement, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination.

#### **XIII. Perpetual License**

Except for termination for cause, Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

#### **XIV. Warranties**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User in accordance with the terms of this Agreement. This indemnity shall survive the termination of this agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Licensors warrants that the physical medium, if any, on which the Licensed Materials is provided to Licensee will be free from defects for a period of [time period] from delivery.

#### **XV. Limitations on Warranties**

Notwithstanding anything else in this Agreement:

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

Licensors makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

Except for the express warranties stated herein, the Licensed Materials are provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

#### **XVI. Indemnities**

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.

#### **XVII. Assignment and Transfer**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

#### **XVIII. Governing Law**

This Agreement shall be interpreted and construed according to, and governed by, the laws of [Jurisdiction Convenient to All Parties], excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in [Jurisdiction Convenient to All Parties] shall have jurisdiction to hear any dispute under this Agreement.

#### **XIX. Dispute Resolution**

In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

*{Include all that apply; delete those that do not:}*

Mediation. In the event that the parties can not by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within [time period] after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within [time period] after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

Arbitration. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than [time period] after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

#### **XX. Force Majeure**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **XXI. Entire Agreement**

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, oral or written.

#### **XXII. Amendment**

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

#### **XXIII. Severability**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### **XXIV. Waiver of Contractual Right**

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

### XXV. Notices

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within [time period] after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

**If to Licensor:**

[Licensor

Address of Licensor

City of Licensor

State of Licensor

Country of Licensor

Postal Code of Licensor]

**If to Licensee:**

[Licensee

Address of Licensee

City of Licensee

State of Licensee

Country of Licensee

Postal Code of Licensee]

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**LICENSOR:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Signature of Authorized Signatory of Publisher

Print Name:

Title:

Address:

Telephone No.:

E-mail:

**LICENSEE:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Signature of Authorized Signatory of Licensee

Print Name:

Title:

Address:

Telephone No.:

E-mail:

Version 2.0 (July 4, 2001)

## **An Electronic Information System for International Law (EISIL)**

### **I. Introduction and Background**

Recent years have been characterized by the growth of international law and the spread of the Internet. As the country's oldest learned society devoted to engaging the public on issues of international law, the American Society of International Law is assessing how best to use the tools of the digital age to serve the public and to fulfil our mission of advancing the understanding of international law. The Andrew W. Mellon Foundation has generously agreed to support this workshop to consider these issues.

The Electronic Information System for International Law (EISIL) is an initiative of the ASIL with the cooperation of the Max Planck Institute of Comparative Public Law and International Law (MPI) in Heidelberg, Germany to build a comprehensive Internet-based resource of international legal sources and, eventually, analysis and commentary. It will be not only an archive, but also a rich research guide. EISIL will not only provide the veteran the depth of resources needed for sophisticated legal research, but will also provide the novice with the information needed to embark upon international legal research. In sum, EISIL will attempt to compile in an open database authenticated primary materials, which until now have been scattered in libraries, archives and websites, and make what has often been a cloistered area of law open to anyone with a computer and a modem.

While the goal of EISIL is clear, the road it must follow is not.

The purpose of the workshop is to examine the electronic information environment to discern the role that EISIL can and should play. We also wish to explore the information needs of the international law community and how EISIL can make available the most appropriate and highest quality material for many constituencies including professors, practitioners, government officials, press and the general public.

EISIL is in a development phase. We are therefore open to a broad range of ideas including differing perspectives within international law and other fields that have confronted similar issues. Workshop participants will undertake two days of panels and discussions to examine the evolution of the Internet and of its use in international legal materials. The future of EISIL itself will be discussed through consideration of the four scenarios imagining EISIL through different approaches. We expect the outcome of the workshop to be a substantially modified vision of EISIL with basic assumptions and premises re-evaluated, and directions changed. Through such consideration, we hope to emerge with a clearer picture of what is appropriate for EISIL and the ASIL today.

## II. EISIL Working Assumptions

EISIL ties together elements of several visions both historic and new about meeting the needs of the legal profession with regard to international law information:

- *Comprehensiveness*, where in one location a user can find all materials relevant to subjects of international law today. This would include treaties, national legislation, national and international judicial decisions, and pronouncements and reports of governmental and non-governmental international organisations.
- *Accessibility*, through a sufficiently robust organizing scheme that locates materials (English and non-English) appropriate to the inquiry and to the level of the user from an expert user to a novice searcher.
- *Quality Assurance*, that the material is correct, and that it can be retrieved whenever necessary, and that it can be cited.

In the light of these needs and assumptions, EISIL further assumes that there is a need for *cooperation among information providers* to provide the most comprehensive information-rich environment for international law. Moreover, it would help in providing resources over the long-term and to explore the feasibility of decreasing maintenance and storage costs for each provider through burden sharing.

EISIL seeks to address several developments:

- *Technology* that seems to be virtually unlimited in its capacity for collecting, storing and disseminating information.
- *Proliferation* of information sources with poor quality control and inadequate capacity for long-term maintenance or sustainability. Moreover, there is a need for more precise search mechanisms for faster and more accurate retrieval of information.
- *Growing Need for Staff and Financial Resources* to sustain the electronic information collections already in existence.

However, we also recognize that the assumptions under which we have been proceeding may no longer reflect either the needs of the legal profession or the technological issues of such an Internet-based project. Consequently, the workshop will address the following questions:

- Do the elements of the EISIL vision - comprehensiveness, accessibility, and quality assurance -- remain relevant today?
- Are the core assumptions of EISIL still accurate?
- Are the developments EISIL might address the right ones?
- What institutional design may best address the needs identified?

### III. Four Possible EISIL Scenarios

The EISIL scenarios that follow assume that international legal researchers confront four basic challenges when using on-line information resources:

1. *Not all relevant materials are Internet-accessible.* Since there is no general oversight of which documents are being loaded onto the net, gaps exist in the availability of materials. Although the Internet is one of the most commonly used research tools for students and scholars, it still does not have the depth of a good bricks-and-mortar international law library.

2. *Some documents are hard to find.* Documents may either be archived by organizations which are not commonly known or may be archived in a manner that inadvertently makes them difficult to find through common search techniques. Having a well organized site from which such documents could be easily accessed would greatly speed research efforts.

3. *There is a need for context and/or narrative.* Often one may find a list of treaties or documents on an “international law” links page, but the question remains: why these specific documents? Why are they relevant? (*Are they relevant?*) For example, not all human rights instruments are used in a like manner. Some type of narrative or contextualization is vital in a field as multifaceted as international law. Researchers often need some guidance or perspective as well as lists of primary documents.

4. *Authenticity is an issue.* While a researcher may find the text of a document on a website maintained by an unfamiliar organization, what assurance is there that the digital file is an accurate representation of the actual document? Besides inaccurate file loading, there is the problem of timeliness. Amendments, addenda, reservations and new signatories are only a few ways that a legal text may be changed. How confident is a researcher that the found file contains all such modifications to the document?

Each scenario weighs these assumptions slightly differently and emphasizes certain assumptions as either more accurate or more important than others. Consequently, each of the scenarios described below also has listed the main assumptions to which it is responsive.

### Scenario 1: Grand Central Station

Emphasized assumptions:      Some documents are hard to find.  
Authenticity is an issue.

This option would envision little to no archiving by EISIL, itself. Rather, EISIL would take the responsibility to maintain a comprehensive page of links to international legal documents archived by other organizations. The goal would be to link not to a list of organization websites (although that, too, can be included) but to provide navigation to specific document links.

EISIL itself would add value three ways: first, EISIL would conceptualize an indexing or organizational system for the variety of topics and types of documents in which an international law researcher may be interested. This would in itself be a large undertaking, possibly building on the outline used on the Max Planck Institute website [www.virtual-institute.de/eindex/cfm](http://www.virtual-institute.de/eindex/cfm) and its publication *Public International Law: A Current Bibliography of Books and Articles*. Second, after such an indexing system is established, EISIL's managing group would fill each of the categories with one or more links to relevant primary documents. The managing group would choose which links would be used for any particular document by undertaking a level of quality control to establish that the electronic document which is being "hot-linked" is an accurate representation of the original. Finally, EISIL would periodically test the links to ensure they still lead to the desired document.

The project would be managed by a small managing group that would undertake the indexing scheme, choose the link sites and maintain quality control.

**Scenario 2: An International Law Meta-Language**Emphasized assumptions:

Some documents and, not uncommonly, clauses within documents are hard to find indication the need for more robust searching capabilities.

This scenario would not be an archiving project, *per se*, but the information of XML mark-up language for international legal documents. In its fullest realization, this would become a universal meta-language for the digitalisation and archiving of international legal materials. The use of a unified XML protocol would increase the precision of searches undertaken using that language's terms. EISIL would be, at its base, a consortium of organizations, each of which maintains an on-line collection of primary documents, that agree to use a common mark-up language for indexing, thus allowing more transparent and seamless access to each other's databases. Consortium partners would most likely have search engines on their web-pages to encourage searching using the XML protocols.

### Scenario 3: A Cooperative Archive

Emphasized assumptions: Not all documents are Internet accessible.  
Some documents are hard to find.  
Authenticity is an issue.

EISIL would focus on forming a consortium of interested parties who would jointly bear the burden of archiving the relevant texts. A core group, likely to be the ASIL, MPI and perhaps one to three other groups, would draft the indexing scheme, in a manner similar to scenario 1. That group would then assess their own ability to archive the materials listed and would turn to expanding the consortium group to include other archivists.

This plan is different from Scenario 1 primarily in organizational matters: it assumes joint decision-making but also requires burden-sharing among consortium members. For example, each member would assure that the documents that it has linked to EISIL would take it upon itself to link sites maintained by other organizations which would not take part in the EISIL decision-making process and would bear the burden of checking the accuracy of the documents. Scenario 3, however would broaden the decision-making and the burden-sharing by spreading each amongst a broader consortium with each member taking responsibility for verifying the documents which it links to the system and each member taking part in the EISIL governance.

**Scenario 4: ASIL Stand-Alone Site**

Emphasized assumptions:           The need for contextualization/narrative.  
Authenticity is an issue.

In this option, the ASIL would develop an “EISIL” website out of ASIL’s own particular areas of strength. The texts of documents in *International Legal Materials* or analyses in the *American Journal of International Law*, *Insights* and other publications would form the core of this website, which would probably be extensively linked to sources referred to in each document. The *ASIL Guide to Electronic Resources for International Law* on the ASIL website [www.asil.org/resources/home.htm](http://www.asil.org/resources/home.htm) may provide a model for the use of such hyperlinked text.

## **Scenario 1: Grand Central Station**

### **Advantages**

- No need for the EISIL partners to archive documents themselves.
- Relatively quick construction of the basic site once the organizational scheme is established.

### **Disadvantages**

- The design of a common organizational scheme could be time-consuming, especially if this is done through a consortium. Also, the scheme would need to be revised to reflect new websites that might require revision of the categorization.
- Maintaining “fresh” links may be time-consuming.
- Verification of accuracy of each document is time-consuming and labor-intensive.
- Criteria for selecting links and documents would need to be created. This process could become more complicated if done under the auspices of a consortium.

## **Scenario 2: An International Law Meta-Language**

### **Advantages**

- EISIL itself does not need to maintain a large archive.
- Partners would mark-up their own texts to make uniform searches easier.
- This would make a significant contribution towards creating common protocols and standards for electronic documents in international law.

### **Disadvantages**

- The need to convince potential partners to accept the protocol and make the effort to mark-up texts.
- Requires XML expertise of time for someone to develop such skills.
- Possible need for special software or equipment.
- Long start-up phase and no guarantee that the protocols would become the standard.
- Partners would need to make a significant investment of time.
- Possible technical problems e.g. printing documents due to XML mark-ups.

### **Scenario 3: A Cooperative Archive**

#### **Advantages**

- Burden-sharing among consortium members.
- Quality control of own texts and assumed quality control through choice of partners.
- If consortium is made up of leading international organizations and institutions, immediate acceptability for the site.

#### **Disadvantages**

- Labor-intensive archiving.
- Coordination problems among consortium members.
- Striking a balance in consortium size between burden-sharing and decision-making.
- Would need a good, strong organizational structure with true leadership for the consortium to work well (advisory boards, working groups, etc.).
- On-going commitment by consortium members would be required to command resources.

### **Scenario 4: ASIL Stand-Alone Site**

#### **Advantages**

- Build from strengths.
- Organic growth rather than formalized growth based on an indexing scheme.
- Growth is responsive to current events rather than theoretical constructs.
- ASIL has control over its own products, which would provide the organizational launching point of the links.

#### **Disadvantages**

- Would likely not provide a holistic approach to international law; gaps are likely.
- Would not necessarily include a model for conceptualising the field.
- Cannot provide what it does not have.
- Would still require commitment to verify authenticity and accuracy of “outside” documents to which there are links.

## FUTURE QUESTIONS FOR EISIL: MID-AND LONG-TERM

The following issues or questions do not require resolution at EISIL's outset, but are likely to need attention in subsequent years (in most cases, in fact, answers at this stage would be premature.)

### Financial Aspects

- Which components of EISIL can/should command a fee?
- How will EISIL be financed in the long-term?

### Content Development

- How should content be introduced onto EISIL? Will the question differ for primary source material, classic texts, secondary (interpretive) literature, foreign law, etc.?
- To what extent and how should EISIL fill the information gaps it identifies?
- Should the best sites guide evolve to include a more formal ASIL "certification", or should such qualification remain *de facto* (by virtue of "rated" sites being included on in EISIL's lists)?
- What contribution should EISIL make to the preservation of knowledge (i.e., the issue of archival need)?
- Is there a role for a current news or awareness section to attract users?

### User Interaction

- Will it add value, and is it feasible, to offer user entry profiles to assist in serving varying user segments along an expert-novice continuum? Will the correspondingly different channels through the site be worth developing?
- Similarly, is it worth developing tools designed to serve particular constituencies, such as the general public, pre-collegiate students, or the media?

### Technical Design

- Will it be feasible or warranted to develop an XML mark-up language or other standard set of technical protocols for providing web-based information in international law?

## Project Management

- What steps can be taken to ensure that EISIL offers adequate incentives for its participating content providers?
- Given the collaboration required of EISIL, what steps can be taken to ensure sufficient long-term continuity of the operation?