

Postprint: Risk Analysis and Amendment Suggestions for Digital Resource Licensing Agreement Clauses in Judicial Practice

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Abstract

[Purpose/Significance] Digital resources have gradually become the dominant component in the construction of literature resources in university libraries. From the perspective of judicial practice, identifying high-risk clauses in digital resource licensing agreements and proposing amendments is crucial for the acquisition and utilization of digital resources. [Method/Process] Using the case analysis method, this study searches and compiles typical case judgments from China Judgments Online and Wusong Network, examines potential infringing acts such as library remote access without domain name redirection, setting up directional links, non-compliance with fair use, and copying electronic databases to local servers through mirroring technology, and thereby identifies high-risk clauses in licensing agreements related to the aforementioned infringing acts. [Results/Conclusion] This paper proposes amendments for high-risk agreement clauses from the perspective of judicial practice: for remote access, the scope of authorized users should be expanded and deep linking reduced; for document delivery, efforts should be made to achieve concurrent electronic and paper transmission while complying with restrictive conditions; for long-term preservation, the preservation methods should be clearly defined and deep utilization pursued.

Full Text

Preamble

Digital resources refer to all information resources produced and distributed in digital form and accessed via computers (whether personal computers, handheld mobile devices, or workstations), characterized by intangibility and ease of dissemination. With the continuous development of network technology and digital publishing, digital resources have gradually become the core content of

document resource construction in university libraries. In the process of acquiring digital resources, data suppliers need to sign license agreements with libraries (as purchasers), authorizing libraries and their institutions to use digital resources within the licensed scope. License agreements are legally binding contract texts between data suppliers and libraries in the digital environment. Agreement clauses (or contract clauses) define licensed usage content, restrict usage permissions, and delineate the responsibilities and obligations of the licensee, all of which undoubtedly increase the legal risks for libraries in the actual use of acquired resources.

In the practice of digital resource work, libraries must not only address issues in the acquisition and management of digital resources but also coordinate and resolve user violations such as unauthorized use and abuse of databases, and even bear legal responsibility for user misconduct. Current research on digital resource license agreements has explored various aspects including license agreement models, clause analysis, and legal risk avoidance in licensed use, advancing theoretical research and practical work in license agreements and digital resource acquisition. However, we find that existing studies on license agreement content lack a legal perspective. License agreements contain many provisions, each of which holds significant importance. From the perspective of library use of digital resources and service provision, which clauses are typically involved in library infringement acts, and how to modify and improve high-risk clauses involved in judicial practice would both help solve practical pain points in digital resource acquisition and utilization and enhance libraries' bargaining power during procurement negotiations. Therefore, this study combines typical cases of infringement disputes in library digital resource acquisition and use, identifies and modifies high-risk clauses in license agreements from the perspective of judicial practice, and proposes modification suggestions to balance the conflicting interests between libraries and data suppliers.

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2. Analysis of Existing Research

2.1 Foreign Research Status

2.1.1 Research on License Agreement Template Development Foreign research on digital resource license agreements in libraries or related organizations has a history of 30 years, with relatively mature theoretical research and practical operations that offer high reference value. In the mid-1990s, foreign libraries successively launched research projects on electronic resource licensing, making detailed provisions on electronic resource ordering, retrieval, delivery,

and preservation, and introduced license agreement models designed by libraries themselves. Foreign library associations or consortia also issued guidelines and principles for electronic resource licensing, regulating general principles for licensed use. On this basis, various institutions subsequently developed and introduced license agreement templates with more standardized formats, clearer terminology, and more complete clauses, such as the PA/JISC license agreement template, NESLi2 license agreement template, Yale University Liblicense standard license agreement, and California Digital Library standard license agreement. In recent years, foreign libraries have successively carried out new rounds of revisions to digital resource license agreement templates or guiding principles, further expanding the scope of digital resource licensing rights, refining database vendor obligations, and requiring database vendors to comply with NISO digital resource standards. In 2020, M. Rodriguez comparatively analyzed the accessibility content of nine license agreement models, created optimal expressions for accessibility clauses, and provided guidance for library negotiations with data vendors.

2.1.2 Research on Authorized Use in License Agreements Scholarly research on authorized use in license agreements mainly focuses on three aspects: perpetual access, long-term preservation, and document sharing. Regarding perpetual access, M. Zhang et al. studied the attitudes of libraries and database vendors toward perpetual access rights, proposing that perpetual access rights should be provided after subscription expiration and specifying implementation methods and approaches. C. Bullock proposed that librarians must continuously track perpetual access rights and adjust corresponding collection information accordingly, establishing a set of methods and systems to achieve this goal. Regarding long-term preservation, mainstream international practices involve conducting digital resource preservation practice explorations in the form of research projects. The United States has maturely developed many long-term preservation research projects such as OAIS, LOCKSS, and DPR. The United Kingdom, Germany, Australia, and others have also respectively formulated and published digital resource long-term preservation strategies and implementation principles, expanding digital resource types and improving key technologies for long-term preservation. To promote digital resource long-term preservation and access on a larger scale, institutions have gradually formed digital preservation or management consortia. Regarding document sharing, S. Mangiaracina et al. introduced the optimization and improvement of the Italian Electronic Periodical License Archive (ALPE) project in limiting e-resource lending services in license agreements. J. Murphy explored different methods for inter-library electronic book sharing under constraints such as license agreements and digital rights management.

2.1.3 Research on Privacy Protection A. Rubel et al., from the perspective of privacy protection, analyzed the content of 42 electronic journal license agreements, focusing on authorized use execution, user data collection, and

user data sharing clauses. They discovered serious conflicts between clause content and privacy protection, subsequently proposing that libraries should ensure transparency of data collection and sharing-related contract clauses to users, ensure the normalization of rights-related clauses, and reduce privacy risks associated with investigating unauthorized use through multiple methods. Additionally, library consortia have also made efforts regarding privacy protection clauses. The International Federation of Library Associations and Institutions (IFLA) revised its data protection policy to ensure high-level protection of personal data, clarifying which personal data IFLA processes, where IFLA processes personal data, ensuring data subjects own their personal data, and proposing nine principles for processing personal data.

2.2 Domestic Research Status

2.2.1 Research on Core Clauses of License Agreements Domestic university libraries, whether through the Digital Resource Acquisition Alliance of Chinese Academic Libraries (DRAA) or through individual purchases, generally include definitions, usage and restrictions, responsibilities and obligations of both parties, contract assignment and termination, warranties and disclaimers, and other general clauses in license agreements signed with database vendors. First, regarding authorized users, libraries should carefully review whether the definition of authorized users in the agreement includes guest users and retired teaching and research personnel. Second, regarding licensed use, research has focused on inter-library loan and document delivery, perpetual access and long-term preservation, and usage statistics, revealing different provisions in license agreements of different databases regarding permitted or restricted use. Third, regarding document delivery, some databases allow paper document delivery but not electronic document delivery. For example, the Springer license agreement explicitly stipulates that only a single electronic copy of a single file of a publication can be provided to the receiving library. Some databases allow both paper and electronic document delivery but restrict the quantity of electronic document delivery or require that electronic document delivery must be conducted through secure methods. For instance, The Royal Society of Chemistry database license agreement explicitly permits customers to provide single copies of materials in paper or electronic form or electronic originals to meet inter-library loan supply requests from other libraries at the customer's site, with materials deliverable via mail, fax, or secure transmission. Fourth, regarding perpetual access, some databases allow unconditional perpetual access after subscription cancellation, individual databases require payment of platform access fees, and some cannot provide perpetual access at all. Fifth, regarding long-term preservation, relevant research suggests that libraries and database vendors should negotiate to achieve comprehensive utilization of local preservation, mirror preservation, and consortium archiving to improve data disaster recovery capabilities. Beyond simply preserving full texts, libraries should further strive to obtain deep utilization of document data, such as deep linking of references and supplementary data. Sixth, regarding usage statistics, based on li-

libraries' increasing demands for digital resource utilization, scientific evaluation, and user analysis, database selection of usage statistics standards has evolved from diverse and disorderly to gradually unified. The DRAA work specifications require database vendors to provide member libraries with usage statistics reports using international common standards (COUNTER). Currently, database vendors generally support COUNTER standards or SUSHI protocols to provide customers with statistical data. Additionally, scholars have conducted extensive discussions on other license agreement content such as prohibited use, sales prices, and rights-responsibility relationships. While these studies provide beneficial experience for libraries introducing digital resources through investigation, content 梳理, classification, and comparative research of agreement clauses, they have certain limitations: the research lacks a core perspective of risk avoidance in the process of library use of digital resources and fails to examine high-risk clauses in license agreements and propose modification suggestions from the legal practice of infringement cases.

2.2.2 Research on Legal Application of License Agreements Digital resource licensing belongs to the authorized use of intellectual property rights, with ownership belonging to the resource provider, while the library is licensed to use digital resources under certain conditions and in certain ways. The rights and responsibilities between the licensing parties are defined through license agreements and are legally binding. Regarding legal application, following the principles of party autonomy and close connection, domestic users handling legal application issues of digital resource license agreements should choose Chinese law. The DRAA Work Specifications (2018 Revision) Article 43 stipulates that contracts shall apply relevant Chinese laws and be under the jurisdiction of Chinese courts; arbitration institutions agreed upon in contracts should be Chinese arbitration institutions. In China's current laws, the Copyright Law and the Regulations on the Protection of Information Network Transmission Rights are closely related to digital resource licensing, stipulating the reasonable use of library digital resources and extending to the network environment. Zhang Jing advocates for interdisciplinary research between library science and law, proposing that libraries can apply laws separately in practice, use international arbitration cautiously, and prioritize Chinese court jurisdiction. Research on copyright exceptions focuses on clearly defining copyright exception spaces, exception application and risk response, and challenges and reconstruction of copyright exception systems in the big data era. The library community has been exploring flexible use of exception provisions to expand usage scope.

2.2.3 Research on Risk Avoidance in License Agreements Regarding legal risks in license agreements, Xiang Jiali believes that clauses on contract formation and effectiveness, breach of contract liability, service quality, and dispute resolution must be refined, and further analyzes authorized use, licensor and licensee responsibilities, warranties and disclaimers, applicable law and dispute resolution, and other relevant clauses, alerting to potential legal risks

and proposing response strategies. Regarding infringement cases, Wang Guo et al. conducted statistical analysis on infringement acts, infringed rights, defense reasons, and infringement liabilities in library infringement cases from the perspective of copyright, proposing to prevent and avoid copyright infringement through improving legislation and modifying library's own behavior. These studies, based on infringement cases and closely following the Copyright Law and Regulations on the Protection of Information Network Transmission Rights, appeal for improved legislation to expand the reasonable use scope of digital resources and limit the contractual rights of database vendors, and suggest that libraries establish specialized copyright clearance departments and distinguish between content provision and service provision to strengthen intellectual property management. Unfortunately, these studies have not integrated the content of digital resource license agreement clauses into case and legal considerations. In view of this, this study combines license agreements with judicial cases, proposes a new research approach to identify and analyze legal risks in license agreement clauses from the perspective of judicial practice, and puts forward modification suggestions for high-risk license agreement clauses.

3. Data Collection and Analysis

This study takes library digital resource infringement dispute cases as the research object, selecting the “China Judgments Online” and “Non-Litigation” databases to collect all judgments related to library copyright infringement disputes from January 1, 2010, to December 31, 2020.

3.1 Retrieval Methods and Data Processing

Case retrieval was conducted under the “Advanced Search” option on the “China Judgments Online” website, with “library” as the case name keyword, “Civil Cause - Intellectual Property and Competition Disputes - Intellectual Property Ownership and Infringement Disputes - Copyright Ownership and Infringement Disputes” as the cause of action, “January 1, 2010, to December 31, 2020” as the judgment date, and “judgment” as the document type. To ensure sample comprehensiveness, on the “Non-Litigation” website, searches were conducted with “library” as the keyword, “copyright ownership and infringement dispute” as the cause of action, and “2010-2020” as the judgment year, with “judgment” as the document type. Under these retrieval methods, the search results showed 367 and 1,987 judgments respectively, totaling 2,354 judgments. Each judgment was reviewed, and the search results were adjusted as follows: First, cases unrelated to library infringement were eliminated, such as those where the term “library” merely appeared in the content of the works involved. Second, cases involving second-instance or retrial proceedings for the same case were merged into a single case. Third, cases with basically the same litigation subject, claims, and facts and reasons, but filed separately for different works or in different periods, were merged into a single case. For example, the case where plaintiff Zhang Haishan sued defendant Guangdong Provincial Sun Yat-sen Library for

infringing work copyright consisted of six cases, which were merged into one case here. Fourth, cases that the people's court deemed unsuitable for online publication were eliminated, such as Jinan Jinyan Culture Media Co., Ltd. v. Beijing Daxing District Library for infringing work information network transmission rights. After adjustment, 38 judgments were finally obtained as the research object.

3.2 Empirical Analysis of Library Infringement Cases

3.2.1 Evidence Collection How plaintiffs discover infringement acts, file claims with the court, and submit evidence according to law, and how they collect and organize infringement evidence, holds warning significance for libraries to prevent infringement acts. Reviewing the judgments reveals that plaintiffs mainly collect and organize infringement evidence through: First, logging into the library website on personal or office computers, entering the name of the work involved in the corresponding search page, and recording the URL or IP address. Second, searching for the work involved through computers or local area networks in the defendant library's electronic reading room. Third, to preserve evidence, plaintiffs usually video-record, screenshot, or notarize the evidence collection process at a notary office. Fourth, if the defendant library fails to take timely measures to stop the infringement after receiving the complaint, the plaintiff may even demonstrate logging into the library website and accessing the work involved in court.

3.2.2 Infringing Parties Whether libraries appear as sole defendants or as co-defendants with developers and users can reflect whether the infringement acts in the case are caused by the library's own actions or by database vendors or user actions. As shown in , the number of cases where libraries appear as sole defendants is 12, of which 5 cases, although with a library as the defendant, involve more of the library's collection of App cloud platforms. The number of cases where libraries appear as co-defendants is 25, with third parties held jointly liable by plaintiffs involving Beijing Century Superstar Information Technology Co., Ltd., Beijing Century Duxiu Technology Co., Ltd., Chongqing VIP Information Co., Ltd., and other digital resource or related service providers. This shows that libraries' procurement behavior of obtaining resources and services through transactions with third parties is more likely to involve infringement disputes than traditional libraries' unreasonable acts (such as uploading works involved to their websites without copyright holder permission, but not obtaining the works through transactions with third parties). Therefore, in digital resource acquisition and licensed use, identifying potential risk loopholes in license agreements and understanding the scope of legal support for the reasonable use of digital resources are crucial for safeguarding their own rights and using digital resources reasonably.

The Copyright Law grants copyright holders 17 rights, such as publication rights and attribution rights. In typical infringement cases (see), most are "infringe-

ment of information network transmission rights of the works involved,” followed by “copyright infringement of the works involved.” This shows that libraries are more often found to infringe the information network transmission rights of works involved, which also reflects the reality of library resource digitalization transformation in judicial practice. In the digital environment, libraries face more infringement risks due to network dissemination.

3.2.3 Infringement Manifestations (1) Avoid Setting Directional Links. Linking is an information positioning technology that facilitates user query and acquisition when information has already been provided and is in a state of network dissemination. Directional linking is a special form of linking, belonging to crawler technology that pre-sets conditions to capture web pages, with linking results that are specific or singular, reflecting the proactivity of network service providers. Therefore, setting directional links carries high infringement risk. Cases such as Beijing Sanmianxiang Copyright Agency Co., Ltd. v. Shenzhen University Town Library for infringing the reproduction right of its work involved, and Zhan Qizhi v. Shenzhen Library for providing links to the work involved through URL rewriting technology to establish channels, both determined that libraries established directional link channels to provide the work involved to the unspecified public, constituting infringement acts. Therefore, under the condition of fulfilling reasonable duty of care, libraries should avoid setting directional links as much as possible, reduce the duty of care, ensure the use of safe harbor principles to promote resource dissemination and sharing, and prevent problems before they occur.

(2) Using Database Content Through Remote Access. Libraries purchase electronic databases from database vendors, and digital resources are stored on the servers of digital resource providers. Library websites provide free services to registered users through remote access. In this process, libraries should pay attention to two points: First, the storage location of digital resources. If digital resources are stored in digital resource provider servers, the library is considered a purchaser; if digital resources are stored in the library’s local server, the library is considered a co-constructor rather than a purchaser. Second, whether the website domain name jumps to the digital resource provider’s website during remote access. In the cases of Beijing Junxianlin Culture Media Co., Ltd. v. Suzhou Library, Duxiu Company, and China Social Sciences Press v. Hubei Provincial Library, Superstar Company, libraries remotely accessed the websites of purchased digital resource providers, and only after the page jumped to the digital resource provider’s website could searches be conducted and content of the books involved be obtained. Throughout the process of searching and obtaining the books involved, the domain name jumped to the digital resource provider’s website, and the library itself did not implement the legally defined acts of uploading to network servers or providing file sharing, thus not constituting infringement. In the case of Beijing Youpeng Music Co., Ltd. v. Beijing University of Chemical Technology and Changxiang Wenyuan Company, Beijing University of Chemical Technology was determined to have

jointly infringed the information network transmission rights of the works involved because both parties jointly installed a resource management platform on the server of Beijing University of Chemical Technology's website, making the university a co-constructor rather than a mere purchaser. Therefore, when libraries remotely access purchased resource websites, they should pay attention to resource storage location and domain name jumping to avoid directly presenting information to users.

(3) Distinguish Between Reasonable Use and Legal Use. The Copyright Law and the Regulations on the Protection of Information Network Transmission Rights have set special clauses for the reasonable use of digital resources by libraries, such as restricting digital resources to classroom teaching or scientific research use, providing legally published digital works collected by the library to service objects within the library premises, and reproducing works in digital form for version preservation needs. However, in judicial practice, libraries using reasonable use as a defense to exempt liability need to provide evidence proving they have adopted corresponding technical measures to limit the scope of providing works to specific ranges and prove they have fulfilled reasonable duty of care, which undoubtedly increases the difficulty for libraries to successfully use reasonable use as a defense. For example, in the case of Beijing Sanmianxiang Company v. Southwest University and Beijing Shusheng Company, Southwest University's defense using reasonable use clauses was rejected because the court held that Southwest University failed to provide evidence proving it had adopted technical measures and means to limit the scope of providing works to classroom teaching or scientific research, constituting infringement. Similarly, Chongqing University of Posts and Telecommunications was found in another case to have failed to prove that the works it disseminated had legitimate sources and that it had fulfilled reasonable duty of care, thus not meeting exemption conditions and infringing information network transmission rights. Legal use, however, refers to libraries obtaining publications through legitimate channels. Although the publications infringe the copyright of other works, libraries' collection and lending of books based on their public service functions and for non-commercial purposes do not constitute infringement. In a series of cases against Sun Yat-sen Library, the library's collection and lending of periodicals and newspapers containing infringing works were determined by its functions, without subjective intent or gross negligence to commit infringement, constituting legal use and not infringement.

(4) Copying Electronic Databases to Local Servers Through Mirror Technology. Libraries copy electronic resources provided by database vendors to local servers through mirror technology, forming "mirror sites" to provide users with online reading and downloading services of electronic resources. At this time, if infringing works exist in the electronic resources, the library and the digital resource provider constitute joint infringement. Although the library and the resource provider sign contracts stipulating responsibilities, the contract is an internal agreement between the two parties and does not have legal effect against third parties. In the case of Peking University Press v. Mi-

anyang Library and Superstar Company, Superstar Company copied the works involved to Mianyang Library's local server, and both were judged to constitute joint infringement. Therefore, libraries should strengthen the review obligation for resources preserved locally and adopt reasonable measures to prevent infringement and fulfill reasonable duty of care. Once infringement acts occur, libraries should promptly delete the works involved from the server, completing the required "notice-and-takedown" procedure, and if no economic benefits are obtained from the act, libraries may not bear compensation liability. Libraries must not modify, update, or edit databases; the uploading, updating, and maintenance of "mirror sites" are the responsibility of suppliers.

4. Analysis and Modification Suggestions for High-Risk Clauses in License Agreements from Judicial Practice

License agreements are the legal basis for libraries to "license-use" digital resources. Based on the above case facts, libraries' suspected infringement acts involve establishing directional link channels or deep links, providing convenience or cooperation for browsing or downloading works involved through remote access or document delivery, and local or mirror technology storage and co-construction of digital resources. The users involved include both authorized readers and the unspecified public, while courts often focus more on whether the defendant has provided works involved to the unspecified public to infringe information network transmission rights, especially whether remote access clients belong to authorized users. Authorized users, document delivery, resource preservation, and other licensed uses, as well as prohibited content such as modifying, abridging, or deep linking subscription products through crawler technology, are important clauses in license agreements. Using the defense reasons of plaintiffs and defendants in judicial cases and court judgments to examine and inspect high-risk clauses in existing license agreements and propose targeted modification suggestions holds more practical guiding significance for libraries in introducing and fully utilizing digital resources.

4.1 Remote Access Should Expand Authorized Users and Reduce Deep Linking

Digital resource access includes local mirror technology and remote access. However, providing services to library users through local "mirror sites" using mirror technology aggravates libraries' review obligations for digital resources. Once resources contain infringing works, libraries cannot escape infringement liability. Therefore, remote access is a safe choice for linking digital resources. However, existing digital resource license agreements generally have strict restrictions on authorized users. For example, the OUP (Oxford University Press) journal agreement stipulates that authorized users are "the customer's current students, faculty, library readers, employees, or contractors; or individuals physically present at the customer's premises," restricting authorized users not only in affiliation but also in geographical location. In reality, in the digital

environment, university libraries play an important role in supporting distance education, and providing remote access services for digital resources to distance education students has become normal practice. If the license agreement stipulates that authorized users only include the university's faculty and students, and even if "guest users" are included, they are restricted to accessing electronic resources using library premises computers, then libraries face extremely high infringement risks when opening database access permissions to distance education students. In license agreements, libraries should actively negotiate with data suppliers to appropriately expand the scope of authorized users, obtain appropriate authorization authentication procedures, include distance education students as authorized users, and provide services reasonably and legally to avoid infringement risks. Therefore, it is suggested to add a point in the authorized user clause: distance education students who have obtained authorization authentication. At the same time, when using remote access or setting up resource navigation links, libraries should pay attention to their own behavior and distinguish between general links and deep links. According to the Regulations on the Protection of Information Network Transmission Rights, general links belong to network technology services, and the linking act itself does not constitute infringement. If links are promptly disconnected after receiving infringement notices, no compensation liability is assumed. Libraries should avoid linking electronic books to the Internet without copyright holder permission, avoid setting up directional links and deep links and other cross-border service functions, and avoid being determined in infringement cases as providing channels for the dissemination of works involved and constituting joint infringement with data providers through division of labor and cooperation.

4.2 Document Delivery Should Strive for Simultaneous Electronic/Paper Transmission and Comply with Restrictions

Different digital resource license agreements have significant differences in their provisions on "inter-library loan and document delivery." For example, the RSC (the Royal Society of Chemistry) database contract stipulates that "the licensee may transmit single copies of materials in paper or electronic form or electronic originals to meet inter-library loan requests. Materials may be provided via mail, fax, or secure transmission. When provided via secure transmission, electronic files must be deleted immediately after printing." The Emerald database contract stipulates that "for teaching purposes, institutions may provide single authorized users at other libraries within the country's libraries with single articles or single chapters from authorized resources via mail, fax, or other secure transmission methods (such as using Ariel or similar transmission software where printed files are deleted upon transmission)." The CNKI database contract does not set specific clauses to explain document delivery in the license and service contract but lists in the contract attachment "Unreasonable Use of CNKI Database and Breach of Contract Liability" that "providing full-text delivery services to persons outside the contractually agreed scope based on the contractually agreed database exceeding ten articles per day" constitutes

infringement and serious breach of contract by Party A. Statistics show that agreements allowing both electronic and paper document delivery, allowing only paper document delivery but not electronic, and not explaining document delivery account for 39.2%, 32.1%, and 25% respectively, while the ASCE stipulates that inter-library loan and document delivery are not allowed. Therefore, when introducing license agreements, libraries should learn from existing rights and explicitly state in clauses that “the licensee is permitted to transmit paper or electronic versions of authorized resources” to 争取 larger service space for reasonable resource use. However, libraries should recognize that inter-library loan and document delivery are highly regulated and restricted service forms. In practice, libraries should pay attention to details regarding document delivery purposes, quantities, methods, and subsequent processing to avoid “non-subjective but objectively constituted” breach of contract acts. Regarding subsequent processing of document delivery, license agreements usually require the receiving party to delete electronic documents immediately after printing, but RSC also explains special cases: “Electronic files must be deleted immediately after printing, unless he/she is a visually impaired person, clearly stating that the electronic document is provided for his/her private use.” This both meets the usage needs of special users and explicitly states in the agreement that it belongs to document delivery exceptions, better avoiding potential breach of contract acts and worth emulating in other agreements.

4.3 Long-term Preservation Should Clarify Preservation Methods and Strive for Deep Utilization

As users and builders of digital resources, libraries have the right to request digital archiving rights and long-term access rights to subscribed resources. The basic forms of long-term preservation in license agreements mainly include three types: local archiving, permanent online access, and third-party archiving. The RSC database contract stipulates that “the publisher shall archive through Portico, CLOCKSS, or similar third-party archives; or provide the customer with electronic copies of relevant journal parts for self-hosting.” The Emerald database contract stipulates that “for long-term preservation and archiving of resources, the publisher shall preserve journal content in Portico, allowing institutions and their authorized users to continue using the archived resources when the publisher cannot provide archiving.” At the same time, these two license agreements also stipulate that users have permanent access rights to content within the subscription period after subscription expiration. Database vendors such as VIP allow local archiving by institutions. In long-term preservation agreements, libraries should clarify preservation methods and how permanent access rights are implemented, while also noting: First, during agreement negotiations, strive for free access to published content through online permanent access, while access to updated content may incur certain fees. Second, in actual operations, whether local archiving is through mirror technology or paper archiving, resources must not be updated, modified, or abridged. The uploading, updating, and maintenance of archived content are the responsibility of

suppliers to avoid the “co-creator” risk of the library itself and prevent behaviors such as those of Mianyang Library and Beijing University of Chemical Technology Library that constituted joint infringement as co-creators. In addition to avoiding “co-creator” risk, if the library receives infringement notices due to purchased and used resources involved, it should immediately initiate the “notice-and-takedown” procedure. Third, regarding reasonable duty of care, whether for permanent access or local archiving, libraries’ responsibility for grasping the boundaries of linking services and reviewing locally archived content has increased. They should correctly assess the legal risks of accessed/stored content, obtain legal authorization through signing technical contracts and paying for authorized acts, fulfill reasonable duty of care, and exempt themselves from infringement liability. Furthermore, scholars continuously call for actively supporting data for deep utilization of literature, such as linking references and supplementary documents, on the basis of long-term preservation of resource texts.

5. Summary and Outlook

This article takes library copyright ownership and infringement dispute cases as samples to analyze infringement acts that easily occur in libraries’ digital resource utilization process: First, setting directional links or deep links beyond the scope of general links; second, remote access domain names not jumping, presenting “directly providing works involved to users”; third, using reasonable use as defense without providing evidence of adopting corresponding measures and fulfilling reasonable duty of care; fourth, preserving digital resources to local servers as “co-creators” and constituting joint infringement with digital resource providers. From the perspective of judicial cases, this study identifies high-risk clauses in digital resource license agreements and proposes modifications and improvements to high-risk license agreement texts in three aspects: remote access, inter-library loan and document delivery, and long-term preservation and permanent access.

However, due to limitations, there remain issues for further research: First, infringement manifestations of libraries when using foreign databases. The cases involve domestic digital resource providers such as Superstar Company, VIP, and Apabi Digital Library, lacking foreign database infringement cases. Future research should refer to foreign digital resource infringement case samples to obtain more comprehensive and detailed research conclusions. Second, examining the conflict and coordination of rights and interests between database supply and demand parties from the historical process and forward-looking perspective of digital resource acquisition. Both parties negotiate agreement clauses from their own interests and legal frameworks, with conflict points being the focus of “contention” between the two parties. Vertically examining what changes have occurred in agreement content is important for understanding recent research on license agreements. However, license agreements usually have confidentiality agreements, and the author was unable to obtain a large number of license

agreement contract texts, limiting vertical comparative research on coordinating conflicts of interest between supply and demand parties. Third, the legal essence and solutions of over-protection and restricted use in foreign databases. As users in the digital resource acquisition process, libraries are in a weak and passive position. Although procurement alliances have been established and played a positive role in resource acquisition, they have not fundamentally reversed the weak position of libraries. How to deconstruct the legal essence of resource providers' restricted use and over-protection in clauses on responsibilities of both parties, expose their unreasonable aspects from the legal level, and crack the "hegemonic" behavior of resource providers is worthy of further research.

References

[1] Cheng Wenyan, Sun Tan, Huang Guobin. Analysis and Enlightenment of Typical Research Projects on Electronic Resource License Agreements[J]. Information and Documentation Services, 2008(5): 47-50.

[2] LIBLICENSE. Welcome to the LIBLICENSE Project[EB/OL]. [2021-03-12]. <http://www.liblicense.crl.edu>.

[3] Cheng Wenyan, Sun Tan, Huang Guobin. Research on Electronic Resource License Agreement Models[J]. Library and Information Service, 2008, 52(8): 109-112, 42.

[4] Tang Qiong. Research on Foreign Digital Resource License Agreement Templates[J]. Information and Documentation Services, 2011(5): 41-44.

[5] LIBLICENSE. Model licenses[EB/OL]. [2021-03-12]. <http://www.liblicense.crl.edu/licensing-information/model-license/>.

[6] CDL. Standard license agreement[EB/OL]. [2021-03-12]. <http://www.cdlib.org/services/collections/licensed>

[7] Xiang Jiali, Zhang Jing, Zhou Hong. Research on Recent Developments in Foreign Library Digital Resource Licensing Policies[J]. Journal of Academic Libraries, 2020(1): 26-34.

[8] RODRIGUEZ M. Negotiating accessibility for electronic resources[J]. Serials Review, 2020, 46(2): 150-156.

[9] ZHANG M, ESCHENFELDER K. License analysis on one-journal perpetual access of library[J]. Journal of Academic Librarianship, 2013, 40(1): 62-69.

[10] BULOCK C. Tracking perpetual access: a survey of librarian practices[J]. Serials Review, 2014, 40(2): 97-104.

[11] Chen Yingmin. Research on the Development of Long-term Preservation of Digital Resources in the United States[J]. Information Research, 2017(6): 79-85.

[12] Chai Huiming. Goals, Principles, and Strategies for Long-term Preservation of Library Digital Resources: Based on Analysis of Digital Preservation Strate-

- gies of National Libraries in the UK, US, Germany, and Australia[J]. *Library Science Research*, 2020(14): 57-62, 75.
- [13] MANGIARACINA S, RUSSO O, TUGNOLI A. To each his own: how to provide a library user with an article respecting licence agreements[J]. *Interlending & Document Supply*, 2015, 43(4): 199-206.
- [14] MURPHY J A. Ebook sharing models in academic libraries[J]. *Serials Review*, 2019, 45(3): 176-183.
- [15] KLUZEK M. A practical guide to e-journal and e-book supply-a UK perspective[J]. *Interlending & Document Supply*, 2014, 42(1): 13-15.
- [16] MOWER A. Opportunities for eTextbook innovations and partnerships: a case study of the Marriott Library at the University of Utah[J]. *Learned Publishing*, 2021(34): 30-34.
- [17] RUBEL A, ZHANG M. Four facts of privacy and intellectual freedom in licensing contracts for electronic journals[J]. *College & Research Libraries*, 2015, 76(4): 427-449.
- [18] IFLA. IFLA data protection policy[EB/OL]. [2021-06-05]. <https://www.ifla.org/data-protection-policy/full-text/>.
- [19] Wu Gao, Yang Ying. Comparative Study on Important Foreign Digital Resource License Agreement Clauses[J]. *Library*, 2015(6): 71-76.
- [20] Xiang Jiali, Zhuang Yuyou. Analysis and Risk Response of Core Clauses in Electronic Resource License Agreements[J]. *Library and Information Service*, 2016(16): 73-78, 85.
- [21] Hu Fang, Zhong Yongheng. Impact of Electronic Resource License Agreements on Document Delivery Services and Response Strategies[J]. *Library Journal*, 2007(11): 27-29, 5.
- [22] Zhu Rulong. Research on Copyright Issues in Long-term Preservation of Digital Resources in University Libraries[J]. *Library and Information Service*, 2019, 63(7): 23-29.
- [23] Zhao Baoying, Fan Xue. Comparative Analysis of Domestic and Foreign Digital Resource Statistics Standards[J]. *Library and Information*, 2010(6): 39-43, 85.
- [24] Digital Resource Acquisition Alliance of Chinese Academic Libraries. DRAA Work Specifications (2018 Revision)[EB/OL]. [2021-03-23]. http://www.libconsortia.edu.cn/Spage/view.action?pagecode=glgf_2.
- [25] Li Jia, Zhang Jing, Shao Jing. Investigation and Cognition Research on Digital Resource License Agreement Content Based on DRAA Group Procurement[J]. *Journal of Academic Libraries*, 2019(3): 28-34.
- [26] Wang Honghua. Textual Analysis of University Group Ordering Agreements[J]. *Library and Information Service*, 2014, 58(22): 28-32, 47.

- [27] Zhang Jing. Research on Legal Application Issues of Foreign Electronic Resource License Agreements[J]. Library and Information Service, 2014, 58(18): 36-40.
- [28] Zhang Jing. Research on Legal Issues in International Licensing of Digital Resources[J]. Modern Intelligence, 2018(11): 42-47.
- [29] Huang Guobin. Research on Copyright Exception Space Enjoyed by Libraries in the Digital Environment[J]. Library Work and Research, 2015(8): 43-45.
- [30] Liu Na. Research on the Application and Risk Response of Copyright Exceptions for Libraries in China[J]. Library Theory and Practice, 2016(2): 20-22, 84.
- [31] Liu Na. Research on the Application of Information Network Transmission Rights Exceptions for Libraries in China and Copyright Risk Response Strategies[J]. Library Science Research, 2017(4): 9-12, 26.
- [32] Li Qiurong. Challenges and Reconstruction of Library Copyright Exception System in the Big Data Era[J]. Library Work and Research, 2019(7): 10-14, 49.
- [33] Xiang Jiali. Legal Risk Prevention in Library Database Ordering Contracts[J]. Library Magazine, 2016(1): 57-61, 83.
- [34] Wang Guo, Zhang Libin. Case Analysis and Legal Consideration of Library Copyright Infringement Cases in the Internet Era[J]. Library and Information Service, 2019, 63(8): 29-37.
- [35] Wang Guo, Zhang Libin. Challenges, Dilemmas, and Solutions: Re-examination of Reasonable Use Clauses and Their Application for Libraries in the Digital Environment[J]. Library and Information Service, 2019, 63(10): 5-11.
- [36] Wang Guo, Zhang Libin. Research on Trends in Library Copyright Infringement Litigation and Risk Avoidance Strategies for Development[J]. Information Science, 2020(3): 87-92.
- [37] Gao Fei. Determination of Infringement by Directional Link Service Providers[J]. People's Judicature, 2019(9): 84-86.
- [38] Zhang Huibin, Wang Xinyi. How to Determine Acts of Infringing Information Network Transmission Rights?—Comparison Based on “Server Standard” and “User Perception Standard”[J]. Press Circles, 2017(4): 42-47.

Author Contributions

Gu Wenhao: Responsible for data investigation and paper writing;
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Abstract: [Purpose/significance] Digital resources have gradually become the leading role in the construction of document resources in university libraries. It is essential to identify high-risk clauses in digital resource license agreements from the perspective of judicial practice and propose modification suggestions for the introduction and use of digital resources. [Method/process] By using case analysis, we sorted out typical verdicts from China Judicial Document Network and Non-Litigation websites, examined potential infringement acts such as library remote access without domain name jumping, setting directional links, non-compliance with reasonable use, and copying electronic databases to local servers through mirror technology, and identified high-risk clauses in license agreements related to these infringement acts. [Result/conclusion] Modification suggestions are proposed for high-risk agreement clauses from the perspective of judicial practice: for remote access, authorized users should be expanded and deep links reduced; for document delivery, simultaneous electronic and paper transmission should be strived for while complying with restrictions; for long-term preservation, preservation methods should be clarified and deep utilization strived for.

Keywords: digital resources; import contract; infringement acts; license agreement; high-risk clause

Note: Figure translations are in progress. See original paper for figures.

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