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Licensing Online Content to Ensure Patron Privacy:

An Informal Survey of Oregon Librarians

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Jill Emery (she/her) is the Collection Development & Management Librarian at Portland State University Library and has more than 20 years of academic library experience. She has held leadership positions in the American Library Association's Acquisitions Library Collections & Technical Services Division (now known as CORE), Electronic Resources & Libraries, and NASIG. She serves on the Project COUNTER Executive Committee, the Operations and Collections Council of the Western Storage Trust of the California Digital Library and on the advisory committee of the Open Access E-Book Usage project. Jill is a member of *The Charleston Advisor* editorial board and is the columnist for "Heard on the Net," and is on the editorial boards for Collaborative

Librarianship and for *Insights: the UKSG journal*. Her co-authored book is *Techniques for Electronic Resource Management: TERMS and the Transition to Open*.

Introduction

Librarians throughout Oregon are committed to securing the rights for patrons utilizing resources within their libraries with the greatest level of protection regarding their online identities as possible. At the same time, Oregon librarians are committed to providing their patrons with the online resources they want to access whether it is a public library, an academic library, a community college library, or a health services library. Finding the balance between providing the desired online content with the safeguards that protect their patrons can be difficult. Oregon librarians recognize the need to secure patrons' online privacy but also want to meet patron demands for resources. Patrons tend to prioritize their quest for content over their personal privacy concerns. By contrast, librarians evaluate the privacy needs of their community as a whole as opposed to on an individual level. They are committed to the third principle of the American Library Association's Code of Ethics: "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted" (ALA, 2021).

As with many issues in the 21st century, a tension exists between the individual's wants and the best practices for community well-being. To better understand this inherent conflict between access and security, I asked several Oregon librarians to answer a series of questions about their electronic resource licensing practices. This article outlines the current practices these colleagues employ to reconcile this tension between patron demand and patron safety and to identify ways for improving the situation regarding online resource usage.

Methodology

To gather information about electronic resource licensing practices, I contacted librarians working in collection development and management at various Oregon libraries. I did not seek institutional review board (IRB) approval from Portland State University because I was asking about the process and procedure used at their local institutions, and not about how Oregon librarians' feel about the process or practice they were employing. All survey respondents asked to remain anonymous, so throughout this article they are identified only by the type of library they represent.

Annotated Bibliography

- While patron privacy is a topic of great interest to the field of librarianship, it is still an emerging field of study. A rudimentary literature search in *Library, Information Science & Technology Abstracts* (LISTA) revealed the following related works: “Issues in E-resources Authentication and Authorization” (Corrado, 2020) focuses on how patrons access online content, but does not fully delve into the issue of online identity security that can occur with electronic resource usage.
- *Hidden Online Surveillance: What Librarians Should Know to Protect Their Own Privacy and That of Their Patrons* (Fortier & Burkell, 2015) describes breaches of patron information privacy that occur through behavior tracking on provider websites.
- *Licensing Privacy—Vendor Contract and Policy Rubric* (LDH Consulting, 2021) is a presentation given by Becky Yoose on evaluating library licensing agreements for key components on data privacy. This event highlighted a rubric to use when assessing provider agreements for specific clauses regarding patron privacy, confidentiality of patron identification, patron access and use of the resource, and use of patron data.

Licensing Best Practices from Orbis Cascade Alliance

The survey questions for each email respondent were derived from *Licensing Best Practices for Orbis Cascade Alliance & Member Institutions* (Orbis Cascade Alliance, 2020). All Oregon librarians have access to this document, which can be used as a basis for negotiating with vendors on a number of contractual clauses. The privacy clause in this document is considered a required element of all Alliance-negotiated agreements and is comprehensive in its scope and purpose:

Licensor shall not, without the prior written consent of the Licensee(s) transfer any personal information of any Authorized Users to any non-affiliated third party or use it for any purpose except as is necessary to perform the Services in compliance with applicable State & Federal laws and institutional regulations, including the Family Educational Rights and Privacy Act (“FERPA”).

Licensor agrees to maintain the confidentiality of any personal identification data relating to the usage of the Licensed Materials by Licensee(s) 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. Vendor will maintain current data security management practices that follow established standards and will notify Licensee in the event of any data breach occurring.

Survey Questions and Responses

Responding to this survey were a public librarian, an academic librarian, a health sciences librarian, and a community college librarian. Each librarian participating in the email survey was asked the same five questions. The following are the questions and a summary of the answers.

1. Do you routinely negotiate review clauses regarding end-user privacy and/or add in a clause regarding end-user privacy in electronic resource agreements?

The respondents provided similar answers. The community college respondent noted that their information technology office reviews agreements for privacy concerns but if an agreement does not have a clause, they do not insert one. Everyone answered that they review the clause if it is present, but most choose not to negotiate it unless it is seen as stating something egregious or out of line with standard electronic resource usage. The lack of inserting a clause when one is absent was echoed by the academic respondent, public library respondent, and health sciences respondent.

2. If you do actively review agreements for end-user privacy, what in particular are you most concerned with ensuring is included or excluded in regards to a privacy clause?

When the respondents looked specifically at the privacy clause, the consensus among each respondent was that they focused on patron identification information only being used to enhance the experience with that resource and not collected and distributed elsewhere (to a third party). One respondent noted that they also review resources to see if there are any situations in which a patron can gain additional functionality only by creating an individual account. In such cases, the respondent said they push back on the provider.

3. If you are a member of the Orbis Cascade Alliance, do you actively use the required privacy clause provided by the Licensing Best Practices (Orbis Cascade Alliance, 2020) documentation in local or institutional licensing work?

Not everyone responding was a member of the Orbis Cascade Alliance, but of those who were, the decision to rely on the best practices was split. There did seem to be familiarity with the best practices but the language provided was not always used readily in negotiation.

4. If you are an Alliance member and do not use the documentation provided in the Licensing Best Practices, can you share why not?

The reasons why the best practices were not used ranged from there not being a new agreement to negotiate, not having staffing to review past agreements, or that license agreements were managed by procurement or contracts offices where the librarians are not afforded much influence or control over how agreements are handled locally.

5. Lastly, would you be willing not to license a product or service due to a privacy clause to which you felt your library could not agree with or when a provider chose to remain silent on privacy (such as not including a clause at all)?

The majority of the respondents stated that they had not canceled online resources due to a lack of a privacy clause or because a provider had knowingly used patron information in an inappropriate way. In spirit, they all felt they would cancel if this became an obvious violation of patron privacy. However, most noted that patron desire to have specific content available was the overriding factor for maintaining agreements and content where privacy assurance was dubious. One respondent did note they had canceled a resource after the provider began an aggressive direct marketing campaign to their end users. However, this librarian also noted that their institution made sure to educate end users on the pitfalls of creating personalized accounts with providers through any given providers' website as another way to counter privacy concerns.

Conclusion

Given the responses to the survey, the Oregon librarians who were interviewed are aware of the concerns and potential pitfalls with not signing license agreements for content with problematic privacy clauses or no privacy clauses in place. The demand for content by patrons tends to outweigh concerns of patron privacy. So in this sense, the individual's desire to have content overshadows the work to be done for the common good.

In addition, depending on the institution, the library might not have the final say regarding patron privacy issues. An organization might assign contract negotiation to a procurement office, a contracts committee, or information technology department. In such cases, it can be difficult for librarians to provide meaningful input on the wording of the license agreement. All respondents felt that given the time constraints of their jobs and the myriad of work they are committed to accomplishing daily, undertaking a systematic review of all past license agreements appears to be daunting and an unachievable goal.

The Oregon librarians who participated in the survey appear to be doing the best they can to safeguard patron privacy through their license agreements. They seem to be aware of the best practices available for reference and there is an understanding that patron privacy is a key issue of concern. When trying to balance patrons' desires for content with patron privacy, the best course of action may be in informing the end user of their own responsibility with providing personal information to content providers. While there is an inclination towards wanting to re-review and apply a rubric review such as the one designed by Becky Yoose, the heavy responsibilities of daily activities make this work more aspirational than

practical. As with many issues and concerns within today's libraries, the reconciliation of personal patron need for content versus the work to ensure that the community good is upheld falls back to the best efforts of transparency on behalf of everyone involved and what can be realistically achieved.

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