



Center for Research Libraries

6050 South Kenwood Avenue
Chicago Illinois 60637-2804 USA

1. Potential digital rights to be obtained from newspaper publishers/proprietors of newspaper content:

When a library acquires rights from a publisher to microfilm a newspaper title, it should also attempt to secure a set of specific digital rights for limited “downstream,” digital uses of the newspaper contents on a non-exclusive basis. (Limited digital rights should also be provided for in regulations and statutes governing legal deposit of newspaper materials.) The specific rights sought can vary, ranging from minimum rights for simple digital conversion of news content and off-line archiving of the resulting files (preservation “dark” archives) to liberal rights to convert, enhance and distribute the news content on-line to broad constituencies in highly functional form.

Rights obtained must be granted to the library “and its agents or designees,” to enable the library to eventually outsource necessary services like data hosting, data security, user authentication, etc., if necessary or economically advisable. In order to protect the publisher, however, the rights assigned the library would not be transferable.

Possible rights, from baseline to optimal, include:

- Level 1 – Baseline Rights (“Dark Archives”): The publisher permits the library to digitally capture and convert the microfilmed newspaper content, produce derivative *image* files only, and store the master and derivative image files so produced and associated metadata off-line or on a local network, and migrate said files and data to new formats and media whenever necessary to preserve the integrity and functionality of the content.
- Level 2: The publisher permits the library to digitally capture and convert the microfilmed newspaper content, produce derivative *image* files only, and store the master and derivative image files so produced and associated metadata off-line or on a local network. The publisher also permits the on-line transmission and presentation/display of the image files derived from that content to [specified number of] simultaneous, authenticated users or to multiple simultaneous users within the confines of the library facility or campus, for purposes of academic and scholarly research only. The publisher permits the library to migrate said files and data to new formats and media whenever necessary to preserve integrity and functionality of the content.

- Level 3: The publisher permits the library to digitally capture and convert the microfilmed newspaper content, and store the master and derivative image files so produced and associated metadata off-line or on a local network. The publisher also permits the library to transmit and present and display enhanced (e.g., indexed, searchable, translated, etc.) image and/or text files derived from the microfilmed content to [specified number of] simultaneous, authenticated users or to multiple simultaneous users within the confines of the library facility or campus, for purposes of academic and scholarly research. The publisher permits the library to migrate said files and data to new formats and media whenever necessary to preserve integrity and functionality of the content.
- Level 4 – Liberal Rights: The publisher permits the library to digitally capture and convert the microfilmed newspaper content, and store the master and derivative image files so produced and associated metadata off-line or on a local network. The publisher also permits the library to transmit and present and display enhanced (e.g., indexed, searchable, translated, etc.) image and/or text files derived from the microfilmed content to multiple simultaneous users for purposes of academic and scholarly research. The publisher also permits the library to migrate said files and data to new formats and media whenever necessary to preserve integrity and functionality of the content.

Time Period: The above rights might be granted subject to a time restriction, wherein the library is authorized to exercise such rights only after a specified period of time (e.g., three years, five years) has elapsed since initial publication of the materials. This follows the five-year “moving wall” model employed by JSTOR and the ten-year “mobile barrier” implemented by the BNF.

Forms of Consideration: The nature and amount of payment and non-monetary compensation to be provided to the publisher by the library in consideration for granting these rights, if any, should also be specified in the library’s written agreement with the publisher. Consideration can take one or more of the following forms:

- Provision of master and derivative digital files and (specified) metadata to the publisher
- Ongoing maintenance of master and derivative digital files, including migration, on behalf of the publisher
- Payment of a specified royalty based on the use or distribution of digitized content
- Other

2. Terms to be addressed in agreements for third-party distribution of a library's microform content:

Libraries engaging micropublishers or other third parties to distribute and market their microforms should establish a set of minimum terms in service agreements governing distribution activities. In general the service agreements should be structured in a way that reserves for the library as much control of the activities as possible, and should involve a fair and equal exchange of value between the two parties. Valuation of this exchange should take into account the total investment, current and historic, made by the library, its constituents, funders, and other stakeholders in the creation and maintenance of the source materials and their derivatives.

Many of the terms for such agreements are standard components of contracts. Some terms that pertain to microform content and must be addressed are:

Intellectual Property and Derivatives: Copyright and other intellectual property rights in the source materials and microforms derived from same should not be assigned to the distributor. Terms should specify what rights, if any, are granted to produce and/or distribute derivatives of the microform and microform content.

Consideration: Payments by the distributors to the library or holding institution can be based on:

- A set fee for each title/reel/unit sold
- An annual base fee plus a set per title/reel/unit fee
- A royalty based on a percentage of the net per title/reel/unit earnings of the micropublisher
- Delivery to the library of non-monetary assets or derivatives (such as digital image and text files, metadata, translations, other) derived from the collections content and minimum, specified, non-exclusive rights to the use of those assets in perpetuity

Costs: The responsibility for the costs of production of microform copies, storage, shipping and other fulfillment services must be determined.

Quality Assurance: The terms should identify minimum standards of quality for the production of microform copies in order to ensure the longevity of the reproduction.

Markets: Terms should designate the markets for which the distributor is given distribution rights for the microform resource. The markets can be designated in

terms of market sector or geographic region. Examples of designated markets are:

- All markets
- World / Western Hemisphere / North American / U.S. / EU / other
- All institutions and individuals / all non-profit institutions / all research libraries and academic institutions / users engaged in academic or scholarly research / other

Price: Terms can impose parameters or limitations on prices for markets that are related to the library's community or support base. This can be done by establishing pricing tiers or even specific rates that differentiate between non-profit and commercial subscribers. Tiers and rates can also be tailored to particular markets, such as:

- libraries, universities and other non-profit educational institutions
- non-profit institutions in the library's home country of origin
- libraries and universities in developing regions
- institutions that are members of the a particular consortium

Exclusivity: Distribution rights may be granted to third parties on either an exclusive or a non-exclusive basis, although conditions imposed by prior government or private funding for the creation or maintenance of the sources materials or their derivatives might prohibit an exclusive distribution arrangement.

Transferability: Terms of the distribution agreement should specify the transferability, or non-transferability, of the rights granted therein.

3. Terms to be addressed in agreements for third-party digitization of library microform content:

Libraries engaging micropublishers or other third parties to distribute and market their microforms can establish a set of minimum terms governing those service agreements. The right to distribute can be granted on either an exclusive or a non-exclusive basis. Any rights granted to the micropublisher to produce and distribute digital resources based on the microform content and their derivatives, and the transferability, or non-transferability, of those rights should be explicitly established.

Terms that should be addressed include:

Duration of the agreement: Limitations can be 3 years / 5 years / 10 years / other, with specific conditions under which the agreement can be terminated, or automatically renewed, within the specified timeframe. (The shorter the timeframe, the lower the risk to the library.)

Consideration: Compensation of the library or holding institution by the micropublishers in the form of one or more of the following:

- Baseline: Digital image files, text files, metadata, translations, other digital products derived from the library / holding institution content in specified formats; or placement of those assets in an independently certified digital repository; specified, non-exclusive rights to use those products in perpetuity; prominent acknowledgment of the library or holding institution as the source of content for the resource.
- Desirable: A set royalty as a percentage or portion of subscription or sales revenue, based upon the amount of library / holding institution content used in the digital resource created.
- Desirable: Subscription access to the fully functional digital collection for library / holding institution patrons/members gratis or at a nominal cost: site license only or site license + ILL rights

Minimum specifications for quality, scope and functionality of the digital resource. These should meet the service and, ideally, the preservation requirements of the library / holding institution.

Responsibility for the costs of preparation, production, quality assurance, shipping, and other fulfillment services.

Permitted markets: the markets in which the library / holding institution authorizes the publisher to offer the digital resource can be defined geographically or by type of clientele. Examples are:

- All markets
- World / Western Hemisphere / North American / U.S. / EU / other
- All institutions and individuals / all non-profit institutions / all research libraries and academic institutions / individual users engaged in academic or scholarly research / other

Price Parameters: Conditions may be imposed upon the publisher regarding pricing of the digital resource in various markets, for the purpose of privileging certain constituencies. Constituencies so privileged might include affiliates, members or other supporters of the library / holding institution or its system, populations and institutions in source communities (such as African nations), or sectors like the higher education and non-profit sectors.