

# Online Copyright Compliance

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*Steps in setting up electronic redistribution and archiving service proved to be complex licensing project*

In April 1994, Dialog Information Services (now Knight-Ridder Information Inc.) introduced DIALOG ERA (Electronic Redistribution and Archiving), the first online copyright compliance service. The issue of copyright compliance in the electronic environment had been discussed for years in the online information industry, with no good solutions. The development was significantly more complex than loading a new database or providing new software features on the search engine. ERA required negotiating for additional publisher rights for all the databases on the DIALOG service, then implementing the program throughout the many components of the service. The ERA development required approximately a year and a half from proposal to actual marketing launch. Some 250 primary and secondary publishers with databases on DIALOG had to be contacted to obtain these additional rights. These publishers had entered with a broad range of intellectual property, news, business, scientific and medical information.

**What drove the demand for an electronic redistribution capability?**

The explosion of electronic mail and LAN technology combined with the Internet copyright infringement lawsuit created a customer demand to provide the capability to redistribute and archive information. Our major customers were increasingly asking for a legal means to comply with copyright law, given that many were already electronically distributing search results to their internal customers in dif-

ferent geographical locations. They were dissatisfied with the few alternatives available to them for legally "sharing" information electronically. The DIALOG "solution" had to cover the majority of the more than 400 databases available on the service, in addition to being easy to use with predictable pricing.

**What alternatives were available?**

Individual site licenses with publishers. This was workable for a small number of databases, but not for the more than 250 publishers available on the DIALOG service. Many of the smaller ones did not have a program. Even for the larger publishers, the fees didn't cover the costs of legal review and administration. One of DIALOG's major advantages has been the number of databases available on the service, essentially the "supermarket" of information. Customers liked being able to pay for actual usage on a single invoice, rather than an upfront fee invested in individual publishers.

• Copyright Clearance Center (CCC). A number of large corporations did have Annual Authorizations, license annual agreements. However, this only covered the publishers registered with the CCC, and this was a moving target. The process and negotiations are lengthy, requiring several months to a year to complete. The CCC also has a transactional reporting service, but this is a manual process. Both services only cover hard copy, not electronic copies. Actual payments to the publishers from the CCC are minimal after the administrative costs to the CCC are covered.

• Noncompliance with copyright law. The Internet case changed the perspective of highly visible large corporations. Risk management began to require guidelines for "elec-

tronic" copies, which were inconsistent.

## THE COMPONENTS OF AN ELECTRONIC REDISTRIBUTION PROGRAM

• Definition of the rights required from the publishers. The language in our standard license agreements with publishers was developed prior to the explosion of PC technology. The decision was made to seek additional rights from each publisher that would explicitly allow electronic redistribution, redistribution and archive policy and guidelines for users had to be developed. Discussions about rights with regard to third parties — intermediaries brokers and resellers — were extensive. Redistribution rights had to be differentiated from reproduction rights.

• Pricing model. The hard copy rental functions in a price-per-copy model, with a sliding scale. However, our market research showed that customers preferred a multiplier model, which was more predictable. One complication was that individual publishers had their own scales, but customers demanded a single multiplier schedule. Extensive research was done to create a pricing schedule that was acceptable to both customers and publishers. The multipliers for hard copy and email redistribution were lower than for archiving, in an electronic form.

• Terms and Conditions. Customers on the DIALOG service are required to sign a standard terms and conditions agreement. This agreement requires customers to abide by additional publisher terms and

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conditions found in the additional publication labeled "EMBASE Information Provider Terms and Conditions." This publication is periodically revised and contains publisher specific database terms. Many are additional disclaimers and warranties. However, a number of them contained restrictions on electronic copies, which were in direct conflict with the new program; these had to be revised as part of the negotiations.

\* Software to add this capability to the EMBASE service. This meant adding three customer commands: REFUSE, ARCHIVE and COPIES. It also meant modifying the invoicing programs to bill customers correctly, so small orders with over 100,000 invoices per month. The system to pay royalties to publishers also had to be modified to include the new redistribution revenue.

How did EMBASE accomplish this?

Once the initial market research

was done and the decision to proceed with the program was made, the details were defined by a series of meetings involving most departments in the company. I was part of the team of free-lancing managers that handled all the negotiations with the publishers. The decision was made to go with signed Letters of Agreement for the program, rather than formal amendments. With experience, we found these were signed more quickly and involved less legal review.

Obtaining signatures on the two-page Letter of Agreement was a long process, and took over a year to get agreements for the entire 250 databases included in the initial launch in April 1994. Since the past two years, additional publishers have been added, and there are some who are still "thinking about electronic redistribution."

The publisher reactions varied. Some publishers signed without any questions, but most wanted more explanation. At that point,

some publishers knowledgeable about electronic distribution were enthusiastic about the response to customer need. Others were concerned with the implementation details, which were evolving as we were negotiating for rights. Some publishers were comfortable with redistribution, but not with archiving. Secondary publishers were concerned whether they had the appropriate rights from primary publishers to participate. Discovery publishers were concerned with retaining old information in an electronic archive.

#### Distribution

Customer reaction to EBA was enthusiastic, and it remains the only service of its type, though competitors have announced they are working on similar programs. We are finding there is still a tremendous need to create awareness of copyright law, particularly as we move into new markets outside our traditional library channels.