

A Comparative Analysis of Grey Literature Terms of Use

presented for

GL-16

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Provider: Warranty Disclaimers

- Example: “**As is...** makes **no representations or warranties** with respect to this Website or its content, all warranties relating to this Website and/or its content and/or any website to which it is linked are here to the fullest extent by law excluded...No representations or warranties are given as the **accuracy or completeness** of the information provided...”
 - National Documentation Centre, National Hellenic Research Foundation.
- Purpose: Alerts user that there are no legal guarantees regarding the functioning of the website or its content.
- Advantages: Limits liability of the provider for errors and omissions relating to the content provided and functioning of its website.

Provider: Change in Content

- Example: “Changing circumstances may cause STFC to have to **change** the information and **contents** of its pages at any time.”
 - STFC (Science and Technology Facilities Council, United Kingdom).
- Purpose: Allows the provider to add, edit or remove content in response to a take-down request or other reason.
- Advantages: Obviates the need to make users aware that content has changed. Material changes in content do not constitute breach of contract.

Provider: Take-Down Mechanism

- Example: “Pursuant to Title 17, United States Code, **Section 512(c)(2)**, notification of claimed copyright infringement under United States copyright law should be sent to Service Provider’s Designated Agent.”
 - Library of Zeeland, Netherlands.
- Purpose: Allows copyright holders a mechanism through which works claimed to be infringing can be removed.
- Advantages: A provider can limit its monetary liability for secondary copyright infringement if it expeditiously removes or disable access to content claimed to be infringing.

Provider: Use Equals Assent

- Example: “By **using** the Site, you, the user agree to the following terms and conditions... “**Please review** the Terms and Conditions **regularly** as your **continued use** of the site will constitute your agreement to any changes...date of the last revision...at top of page.”
 - Alberta Health Service.
- Purpose: Access of the website content can bind the user if the terms are made available and it is clear to the user that by proceeding further the user will be bound by the terms and conditions.
- Advantages: All use of the provider’s website is made subject to the terms and conditions. Changes in the terms and conditions can also be incorporated into the agreement when a user next uses the website.

User: Notice of Term/Content Changes

- Example: Absent! Some vendors do provide notice:
 - ARTstor license “may be amended from time to time.” Changes that “***materially conflict***” with existing terms: ***30 days notice via electronic form***. If the licensee objects, the licensor will “use all ***reasonable efforts to agree*** upon ***mutually acceptable language***.”
- Purpose: To inform the user of changes in the contractual agreement with content providers in order that may select to accept or reject the new terms.
- Advantages: For changes to terms or content to be legally enforceable, users must have the opportunity to assent to those changes.

User: Warranty of Non-infringement

- Example: Absent! Some vendors do provide a warranty of non-infringement and indemnification:
 - “Licensor [Greenwood Press] represents and **warrants** that it has the **right and authority to make *Licensed Materials available*** pursuant to these terms and conditions and that providing the Licensed Materials to Licensee **does not infringe** upon any copyrights, patent, trade secret, or other proprietary right of any third person.”
- Purpose: A disclaimer of non-infringement means that the content supplied by the licensor does not infringe another’s copyright. Under the laws of copyright liability using (printing, downloading, reposting, distributing, etc.) a work that is infringing is an act of infringement, making a user that prints, downloads, reposts, etc. liable as well.
- Advantages: Users can use the content made available without fear of copyright infringement as long as their use is not itself infringing.

User: Restoration after Take-down

- Example: “If you believe your own copyrighted material has been removed from the Site in error, you may submit a written Counter Notice to our Designated Agent (as identified above)...”
 - ResearchGate
- Purpose: Allows copyright holders a mechanism through which works removed based on copyright infringement to be restored.
- Advantages: Communication of restoration rights and processes to the contributors, whose content is being removed or disabled, increases the chance of permanent access to items within a provider’s collections.

User: Rights

- Example: “perform work, or transmit or store data consistent with the stated goals, policies, and conditions of use as defined by the bodies or bodies granting you access”
-CERN (European Organization for Nuclear Research)
- Purpose: For users to understand how they may use the content and services of the provider in relation to copyright law, fair use, and any enforceable contract they’ve agreed to.
- Advantages: Couching terms of use in the form of legal agreements (contractual license) allows for the clarification of unresolved or contentious areas of the copyright law and thereby increasing the scope of use rights.

Questions and Answers
now or later . . .

THANK YOU!

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