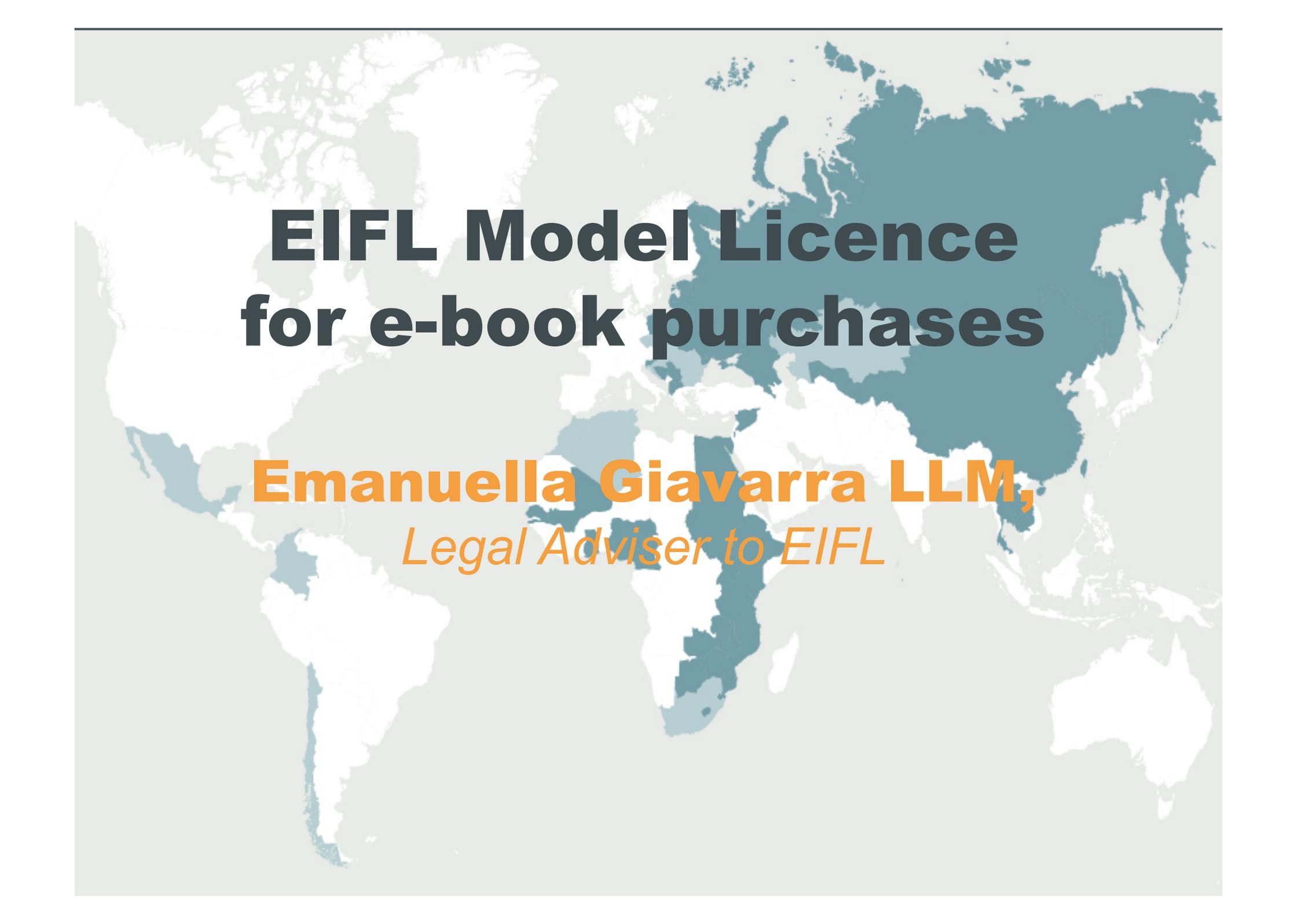




knowledge without boundaries

**Welcome to the  
last of three  
EIFL-Licensing webinars  
on the  
EIFL Model Licences**

A stylized world map in shades of blue and white, serving as a background for the text.

# **EIFL Model Licence for e-book purchases**

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*Legal Adviser to EIFL*

# What are we going to cover?

- Very quick **overview** of the EIFL-Licensing Programme, why EIFL has model licences, and what the benefits are
- Key features of the (draft) **EIFL Model Licence for e-book purchases**, and how it differs from other EIFL model licences
- **Adapting** EIFL model licences for your own negotiations
- Q&A

# Some background

- Through the EIFL-Licensing programme, we negotiate licence agreements with publishers of **e-resources** on behalf of library consortia (and their member libraries) in EIFL-partner countries
- Over **60 high quality e-resources** from more than 25 vendors are currently available through the EIFL-Licensing programme – see [www.eifl.net/list-of-resources](http://www.eifl.net/list-of-resources) for details

## Some background (2)

- In 2012, our library partners **saved an estimated US \$215 million** in subscription fees on EIFL-licensed resources – an average discount of over 97%
- In addition to achieving free or highly discounted pricing, we are able to negotiate the **best terms of use** by using EIFL model licences

*Why?*

# What are EIFL model licences?

- EIFL model licences **set out the terms and conditions of use we want to achieve** in our negotiations with publishers
- The licences (which have just been updated) reflect the **latest international best practice** in the licensing of e-resources
- They offer **better access provisions** for users than standard publisher licences – e.g. broad definition of authorised user, remote access, course packs etc

# What are the benefits?

- **Better negotiating position** with publishers by setting out what we want from the start
- Much **less time consuming** than negotiating individual publisher licences (all have different formats and terms)
- **Standardisation of terms** and conditions of use makes it easier for libraries to manage and ensure compliance

## What are the benefits? (2)

- **Be aware** that occasionally we have to remove or adapt some clauses in EIFL model licences during the negotiation process - but libraries can be sure that the terms and conditions we achieve are the best they possibly can be
- EIFL model licences can be **freely adapted** by libraries in partner countries for their own negotiations with publishers

# Different model licences for different product types

- EIFL now offers the following model licences to take account of key product types and business models:
  - E-journals: subscriptions and backfile purchases (UPDATED)
  - Datasets and e-books: subscriptions (NEW)
  - E-books: purchase (NEW) – *the subject of today's webinar...*

**The new EIFL Model Licence  
for e-book purchase –  
why have we introduced it?**

# E-book purchase – a changing and fast-moving landscape

- E-books are a big (possibly the biggest) growth area in online publishing
- Pricing and business models are evolving, and new models are being introduced by publishers all the time
- Some models appear to be more like a subscription than a purchase with publishers charging an annual fee to access purchased content on an ongoing basis via their servers
- But one thing is the same - all models require a (usually very high) fee to be paid upfront

# E-book purchase – potential licensing pitfalls

- Without a perpetual licence, there is no entitlement to access the content in perpetuity
- There needs to be a requirement on the publisher to supply a complete copy of the purchased e-books
- Institutions must have the right to locally load and mount a complete copy of the purchased e-books, and the right to appoint a third party to mount the content on their behalf

**The new EIFL Model Licence  
for e-book purchase –  
similarities and differences to  
other EIFL model licences**

# What is the same?

- All EIFL model licences follow the **same format** and include the following parts:
  - A licence stating the terms and conditions on:
    - **Who** can use the product
    - **How** access can be provided
    - **What** users can and can't do
    - **Guarantees**, governing law and dispute resolution
  - They are drafted as **an offer** from the publisher to the institution, therefore there is no need for the publisher to sign the licences
  - An “**Acceptance of Licence Form**” which libraries complete and sign to gain access

# What is different (1)?

- Unlike other EIFL model licences, the EIFL Model e-book purchases licence is not just a licence – it is a **supply and licence agreement**
  - Supply of a “complete copy” of purchased e-books (*clause 5.1*)
  - Right to mount purchased e-books on the institution’s local network (*clause 2.2*)
  - Right to appoint a third party to mount purchased e-books on the institution’s behalf (*clause 2.3*)

# What is different (2)?

- The EIFL Model Licence for E-book Purchases includes both a **Perpetual** and **Subscription** element
  - Perpetual licence to access and use the content purchased in perpetuity
    - The licence must be irrevocable – i.e. it cannot be terminated
    - The period of the licence should be stated as being in perpetuity (about 80 years)
  - “Subscription” to access the material purchased online via publisher’s server (this is optional)

# What is different (3)?

- The EIFL Model Licence for E-book Purchases includes **two types of fee** (rather than one as for EIFL Model Licences for journals, and e-book and database subscriptions)
  - Content and Licence Fee
    - This is the upfront cost for the purchase and use of e-books
  - Access Fee (optional)
    - This is the annual cost of accessing purchased e-books on the publisher's website

# What is different (3a)?

- Content and Licence Fee
  - The definition of Content and Licence Fee must state that it covers content and use
  - It is essential to ensure that you get a “complete copy” of purchased e-books (plus Marc Records and, where possible, Metadata) as soon as possible
  - It is also important that the complete copy is supplied in the right format for your network
  - In the EIFL Model Licence for e-book purchases, the publisher must supply the “complete copy” in a format to be agreed within 60 days of the start of the agreement

## 5. RESPONSIBILITIES OF THE PUBLISHER

*5.1 Upon payment of the Content and Licence Fee, **the Publisher shall provide the Institution within 60 days of the commencement of this Licence with one complete copy of the Licensed Material in an appropriate format** agreed by the Institution and the Publisher, which shall be accompanied by such instructions as the Institution will reasonably require to facilitate access to the Licensed Material.*

# What is different (3b)?

- Access Fee
  - This is an option for institutions that want to access the purchased e-books via the publisher's website
  - The agreement should state how much the Access Fee will increase each year – ideally a maximum percentage increase per annum for as many years as possible

# Other key clauses (1)

- Local mounting of purchased e-books
  - Most institutions prefer to access purchased e-books via publisher websites and to receive a complete copy as a back-up
  - Therefore, it is best practice to include a clause stating that institutions will not mount the “complete copy” on their network, or use the “complete copy” until the moment that the publisher is **unable** to make it available from its network or makes it available for an **unreasonably high fee** (“*trigger events*” – clause 2.6)

## Other key clauses (2)

- Intellectual property rights (additional clause 9.2)
  - The Institution will own database rights as a result of local mounting of content (delivered by Publisher for perpetual access)

# Adapting EIFL model licences for your own negotiations – a reminder

- **Remove** all references to EIFL from the licence
- Keep the governing law as English law (the most commonly-used law in international licences) or include your national law – **never be silent** on the governing law in a licence!
- When you add clauses make sure they **do not conflict** with other clauses in the licence so please review as a whole and not just the section

# Summary

- EIFL model licences reflect the **latest international best practice** in the licensing of e-resources
- Following a recent review, EIFL **now offers three model licences** to cover different types of products and business models
- All EIFL model licences offer **better access provisions** for users than standard publisher licences
- EIFL model licences can also be used freely by library consortia and member institutions for their **own negotiations** with publishers

**Thanks for listening and  
happy licensing!**

**Emanuella Giavarra LLM**

**eifl**

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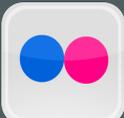
**[www.eifl.net](http://www.eifl.net)**

***Now it's  
question time!***

# Further information

- View the EIFL model licences
  - [www.eifl.net/faq/where-can-i-view-model-licences](http://www.eifl.net/faq/where-can-i-view-model-licences)
- Find out more about the EIFL-Licensing programme
  - [www.eifl.net/licensing](http://www.eifl.net/licensing)
- Any questions about the EIFL-Licensing Programme?
  - Contact Susanna Lob at [susanna.lob@eifl.net](mailto:susanna.lob@eifl.net)

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