

**NO ONE “OWNS” THAT:
METADATA, COPYRIGHT, AND THE PROBLEMS WITH [LIBRARY]
VENDOR AGREEMENTS**

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Librarians focused on copyright and licensing from five institutions conducted research and analysis of peer institutional metadata policies, vendor agreements, and U.S. law in an effort to better understand the legal disposition of metadata created both locally by institutions and from partner institutions across the U.S. Based on our analysis, we assert that the vast majority of bibliographic metadata is simply not copyrightable. While there may be “thin” copyrightable material, institutions should release these records under a CC0 Public Domain Dedication to ensure the widest possible distribution to support research, aid in the dissemination of knowledge, and promote innovation. In this paper, we will review our findings, share our analysis, and make recommendations for libraries to openly share their metadata records.

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EXECUTIVE SUMMARY

The vast majority of metadata is not copyrightable. Insofar as metadata contain any “thin” copyrightable material, they should be released under a Creative Commons 1.0 Universal (CC0 1.0) Public Domain Dedication (CC0)⁵ to ensure the widest possible distribution to support research, aid in the dissemination of knowledge, and promote innovation.

- According to research, including critical case law analysis, it is very likely that the vast majority of bibliographic metadata is not copyrightable.
- Online Computer Library Center (OCLC) has been increasingly claiming copyright interest in library metadata, and using the terms of their library contracts to enforce soft policy and community norms as contractual terms.
- For records created by publishers or vendors, contractual restrictions represent a more limited risk of breach, which may be mitigated via negotiation and direct communication with relevant vendors.
- Acknowledgement of sources and contributors should follow scholarly norms where appropriate.
- Institutions are encouraged to adopt open metadata policies consistent with these recommendations, to facilitate innovation and the dissemination of knowledge.

⁵ CC0 1.0 Universal, CREATIVE COMMONS, <https://creativecommons.org/publicdomain/zero/1.0/> [<https://perma.cc/YS8G-CQ86>] (last visited July 16, 2025).

Metadata is arguably not subject to copyright in the United States. However, sharing all metadata under an open license both grants reuse permission in cases where some added metadata elements may satisfy the “spark of creativity” necessary for copyrightability and clarifies the open status of non-copyrightable metadata elements.

We recommend that institutions adopt policies that express a commitment to openly sharing metadata and directs that, to the extent metadata contains any copyrightable expression, it be made available under a CC0 Public Domain Dedication that waives any applicable rights:

Model Policy on Open Metadata

In alignment with its established commitment to provide open, non-discriminatory access to the world’s knowledge, and in order to support research, aid in the dissemination of information, and promote innovation, [institution] commits to sharing metadata openly with the world.

[Institution] asserts that the vast majority of metadata is not copyrightable. Insofar as the records contain materials copyrightable by [institution], they are hereby released under a CC0 Public Domain Dedication to ensure the widest possible distribution, thereby further supporting research, aiding in the dissemination of knowledge, and promoting innovation.

Bibliographic metadata shall be openly available. More specifically, [institution] will share library-created metadata under a CC0 Public Domain Dedication. Where appropriate, acknowledgement of sources and contributing parties should comply with scholarly norms and legal restrictions.

INTRODUCTION

Open metadata ensures that information is available within the wider discovery ecosystem, rather than either closed within proprietary systems, or limited by restrictive licenses that prevent sharing and reuse. It is important to ensure equitable access to information, and the aggregation and reuse of metadata is essential to ensuring that access.

However, discussion of opening metadata often raises copyright, contractual, and other legal and policy concerns. While there are many players in this space, Online Computer Library Center (OCLC), the organization that most prominently coordinates metadata sharing, has recently increased their claims to having a proprietary interest in library metadata. As part of our exploration of risk, and to raise awareness of the present challenges and conflicts in the field, this report explores and addresses those concerns.

SCOPE

This report aims to:

- Review available institutional open metadata policies to identify their interoperability or divergence, understand norms, identify potential models, and assess historic risk;
- Analyze how copyrightability and contractual requirements apply to library metadata, including analysis of key judicial opinions that reveal differences between factual and interpretive metadata; and
- Identify legal risks related to copyright and contractual restrictions that may arise from policy-setting.

In order to appropriately contextualize information responsive to these topics, the report also defines key terms, explains underlying copyright principles, and explores licensing principles and specific license models.

1. DEFINING METADATA (FOR THIS PROJECT)

Metadata is “data that provides information about other data.”⁶ This report engages specifically with metadata that facilitates access to, enables administration of, or leverages technology to manage library and archival collections.

Libraries use three types of metadata to manage their collections:

- 1) Descriptive metadata, or bibliographic data, is the primary metadata relied on for discovery and access. At its most basic, bibliographic data is the title, author, publication, and subject information necessary to facilitate locating and accessing materials in library collections.⁷
- 2) Administrative metadata describing rights, technical information about an item, preservation information, or other administrative details is used in institutions’ management of resources.
- 3) Structural metadata describe the relationships between different parts of a resource, such as digitized pages in a rare book or chapters in a larger work.

Metadata that aids in the discovery and management of library collections come from a variety of sources. Some are created by metadata experts in libraries, some by vendors, and some, in the case of abstracts, are contributed by authors.

This report makes policy recommendations about legal and contractual issues related to collections metadata that (1) library staff create, license, or aggregate from other sources, and (2) wish to share with the larger library community to support research, power library operations and services (such as interlibrary loan and collection development), aid in the dissemination of knowledge, and promote innovation. This could include locally-generated custom metadata for special collections, copy-cataloged records from shared catalog services, and structural and administrative data that we may

⁶ *Metadata*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/metadata> [<https://perma.cc/9DTN-4U3Z>] (last updated July 10, 2025).

⁷ *Bibliographic Database*, DICTIONARY FOR LIBRARY AND INFORMATION SCIENCE 70 (2004).

want to make available, in machine-readable and machine-usable formats, to our research communities.

II. COPYRIGHT LAW AND METADATA

Copyright law and metadata intersect around the idea of copyrightability. In order to address whether metadata is subject to copyright protection, this report explains key portions of the statutory copyright law, explores relevant copyrightability case law, and then discusses potential application of these legal provisions to library metadata.

A. Copyright and the “Bundle of Rights”

Under current United States copyright law (Title 17 of the United States Code or “U.S.C”), authors or creators of original works automatically hold copyrights in their works. The law, under 17 U.S.C. § 106, grants authors a set of exclusive rights often referred to as a “bundle of rights.” These rights include the right to reproduce, distribute, make derivatives, publicly perform and publicly display their works.⁸ Categories of copyrightable works include literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

B. Fixed and Creative

In order to be eligible for these exclusive rights, the work must meet a threshold test: copyright only protects “original works of authorship fixed in any tangible medium of expression.”⁹ This means that the work must (1) have been created independently, and (2) contain a sufficient amount of creativity. It is relatively easy to meet these requirements for some creative works, like fictional novels and new music. However, other types of works are not eligible for copyright and therefore are *excluded* from copyright protection. For example, copyright does not protect ideas, methods, titles, data, or facts.

This is where library metadata and copyright law intersect. As a general rule, data is considered a form of fact. Under the law, facts are not eligible for copyright protection.¹⁰ Nevertheless, data may be eligible for what is known as “thin” copyright protection in one of two ways: (1) a sufficiently creative expression of data, that has the requisite “spark” of creativity may qualify as copyrightable, or (2) data may be arranged or compiled in sufficiently creative manner to qualify as copyrightable.

C. Case Law On Creative “Spark” For Copyrightability

There is currently no case law directly interpreting copyright in relation to library metadata. Therefore, in thinking about how metadata might be treated under copyright law, it is helpful to consider judicial decisions about similar categories of works. These decisions not only provide factual examples of how judges interpret copyright law, but they also suggest how library metadata may be treated in analogous situations.

⁸ 17 U.S.C. § 106.

⁹ 17 U.S.C. § 102.

¹⁰ See discussion of the case *Feist Publ'ns v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991) below.

In the U.S. court system judges are expected, and sometimes required, to look to earlier decisions to determine how law should interact with new technology. Cameras, photocopiers, VCRs, scanners, e-reserves platforms, and controlled digital lending, have all been viewed through the lens of previous judicial decisions. The application of the law to library metadata is no different - looking at precedential cases and analyzing how their outcomes may translate to library metadata will provide insight into how courts will likely approach the relevant legal issues.

1. *Feist Publ'ns v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991)

The first modern case which addresses copyrightability under current copyright law¹¹ was decided in 1991, *Feist Publications v. Rural Telephone Service Co.* In *Feist*, a company called Rural Telephone Service (Rural) published a white pages telephone directory with an alphabetical list of subscriber names, addresses, and phone numbers. Feist Publications (Feist) wanted to expand their own phone book business, so they sought Rural's permission to use their white pages listings. When Rural refused to grant permission or a license, Feist extracted the listings it needed from Rural's white pages without permission and published a similar telephone directory using the extracted listings. Rural sued Feist for copyright infringement of its directory and the case was appealed to the U.S. Supreme Court.¹²

The Court determined that both organizations' white pages lacked the minimal degree of creativity necessary for copyright protection. The *Feist* decision centered on two well-established principles of U.S. copyright law: 1) facts are not copyrightable; and 2) although facts are not copyrightable, compilations of facts can be copyrightable if they possess the requisite level of originality and creativity.¹³

In order to resolve this case, the Court revisited a former principle known as the "sweat of the brow" doctrine. This doctrine stated that authors receive copyrights as a function of the effort they invest in their works. The Court heard evidence about efforts made by both companies to make the most accurate white pages possible. These efforts included time, training, and finances for the companies to hire staff to do door-to-door accuracy checks in certain neighborhoods. It was asserted that these efforts were the reason that both companies' white pages had acquired copyright. In rejecting the effort-based "sweat of the brow" test, and moving to the more statute-centered "originality" test, the Court stated that effort and time does not satisfy copyright's originality test. Ultimately, the Court rejected the "sweat of the brow" assertions and held that both white pages produced were devoid of any protectable copyright.¹⁴

The Court determined that both organizations' white pages lacked the minimal degree of creativity necessary for copyright protections. The Court observed that, "[a]s a constitutional matter, copyright protects only those constituent elements of a work that

¹¹ The Copyright Act of 1976 went into effect on January 1st, 1978, so that is the reason we identify *Feist* as the first *modern* case which addresses copyrightability.

¹² *Feist Publ'ns v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).

¹³ *Id.*

¹⁴ *Id.*

possess more than a *de minimis* quantum of creativity.”¹⁵ Further, the Court found that there can be no copyright in a work in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.”¹⁶ Arranging a list of data alphabetically is not enough to establish copyright protection in a work. The Court concluded by stating that “this decision should not be construed as demeaning Rural’s efforts in compiling its directory, *but rather as making clear that copyright rewards originality, not effort.*”¹⁷

Feist’s statute-centered “originality” test has remained the modern legal standard for determining copyrightability. It focuses on whether the work possesses at least a “modicum” of creativity. Applying this test, U.S. courts rarely find that facts and data are copyrightable, deciding instead that, like the white page at issue in *Feist*, they fail to meet even this low creativity threshold.

2. *Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 528 F.3d 1258 (10th Cir. 2008).

In 2008, 17 years after *Feist*, one of the few cases directly addressing the copyrightability of data emerged from the 10th Circuit Court of Appeals. In *Meshwerks*, Tenth Circuit Court of Appeals relied closely on the *Feist* test to determine ownership of data that was capable of generating 3D digital models of Toyota vehicles, which Toyota had commissioned Meshwerks to create for use in advertising. Meshwerks sued Toyota for copyright infringement in the digital models, alleging that Toyota had exceeded the uses agreed upon in the contract between the two companies.

Meshwerks argued specific points about the time, effort, and skills necessary to render the models, but the court focused on *Feist*’s test for creativity and originality, relying on the “at least some minimal degree of creativity” threshold established by *Feist*.

The court concluded Meshwerks’ digital models were not copyrightable, finding that, although they were very good copies of the original cars, they added no original expression: “Originality is the [necessary component] of copyright. The designs of the vehicles, however, [are not original]. [They] owe their origins to Toyota, not to Meshwerks, and so we are unable to reward Meshwerks’ digital wire-frame models, no doubt the product of significant labor, skill, and judgment, with copyright protection.”¹⁸

3. *Matthew Bender & Co. v. W. Publ’g Co.*, 58 F.3d 693 (2d Cir. 1998)

Prior to *Meshwerks*, the Court of Appeals for the Second Circuit decided a case involving the unique numbering systems that were applied to public domain materials. West Publishing Co., now Thomson Reuters, created a business model in which they collected public domain court opinions from different U.S. courts and organized them into printed “case reporters,” applying a uniform volume and numbering system. This

¹⁵ *Id.* at 363.

¹⁶ *Id.* at 359.

¹⁷ *Id.* at 364 (emphasis added).

¹⁸ *Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 528 F.3d 1258, 1270 (10th Cir. 2008).

established the National Reporter System, which increased the ability for researchers to do complex, topic-based legal research, regardless of jurisdiction.

Decades later, rival legal publishers produced CD-ROMs containing many of the opinions that West had published in this manner, and planned to include citations that designated page locations using West's printed case law volume and page numbers, which West called "star pagination." West sued the rival publishers and, among many arguments, claimed that star pagination was protected by copyright. The rival publisher, Matthew Bender & Co., asked the court to issue a declaratory judgment that the use of star pagination in the citations in their new CD compilations did not infringe West's copyright.

In *Matthew Bender & Co. v. W. Publ'g Co.*, 158 F.3d 693 (2d Cir. 1998), the Second Circuit rejected West's claim of copyright protection in their internal pagination numbering system. The court held that West's page numbers lacked sufficient originality to qualify for protection as a feature of their case reporter compilation. During the proceedings, West admitted that the pagination of its volumes and the assignment of their page numbers was, in fact, determined not by a person, but by an automatic computer program.

Relying extensively on *Feist*, the court noted that, because the internal pagination of West's case reporters does not entail even a modicum of creativity, the volume and page numbers are not original components of West's case law compilations and, therefore, are not themselves protected by West's copyright. Because the volume and page numbers were unprotected features of West's compilation process, the court ruled that they may be copied without infringing West's copyright.

4. *Assessment Techs. of WI, LLC v. WIREdate, Inc.*, 350 F.3d 640 (7th Cir. 2003).

In *Assessment Technologies of WI, LLC v. WIREdata, Inc.*, Assessment Technologies licensed a database to city tax assessors. The database itself was protected by copyright because it met the originality requirement; specifically, it grouped the data (property locations, measurements, and other factual data) into fields and categories that were not obvious. Another company, WIREdata, sought to obtain the data in the database, and Assessment Technologies sued them for copyright infringement.

In ruling for WIREdata, the Seventh Circuit Court of Appeals noted that WIREdata was not interested in the structure of the database itself, but only wanted the "raw data," which it would then "sort according to its own needs."¹⁹ The court determined that the extraction of the raw data from the database would not infringe the copyright, which covered only the arrangement of the data.²⁰

¹⁹ *Assessment Techs. Of WI, LLC. v. WIREdata, Inc.* , 350 F.3d 640, 643 (7th Cir. 2003).

²⁰ Further, even if the defendant had to copy the entire database, including the categories and fields, in order to extract the data, this would be intermediate copying that constitutes a fair use. *Id.* at 644-645.

5. *Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc.*, (D. Del. 2025)

Recently, the copyrightability of abstract and summaries played out in *Thomson Reuters Enterprise Centre GmbH v. ROSS Intelligence Inc.*, where U.S. District Court for the District of Delaware concluded that Westlaw’s headnotes were sufficiently original to warrant copyright protection.²¹ Headnotes are brief summaries of specific legal issues addressed in a court opinion.²² They are written by attorney-editors, not by judges, and appear at the beginning of a case to help readers quickly identify key legal principles.²³ Each headnote is categorized under a topic and key number in the West Key Number System.²⁴ While useful for research, headnotes are not part of the official judicial opinion and should not be cited as law.²⁵

Although the case is ultimately about training AI and fair use, the court rejected ROSS’s argument that the headnotes were merely summaries or abstracts of judicial opinions; texts that themselves reside in the public domain.²⁶ Instead, the court emphasized that Westlaw’s editors exercised creative judgment in selecting language, framing principles of law, and deciding which points of law to highlight.²⁷ Drawing on precedents such as *Feist*, the court held that although facts and legal principles cannot be copyrighted, the expression of those ideas, here, in the phrasing and structure of headnotes, could be.²⁸

The court further noted that originality does not require novelty or ingenuity, only a minimal degree of creativity in expression.²⁹ Even though the headnotes were based on public domain judicial opinions, the court found that Westlaw’s editorial contributions went beyond mechanical summary and reflected protected authorship.³⁰ ROSS had argued that such editorial content was functionally indistinguishable from descriptive metadata or abstracts and thus unprotectable, but the court dismissed that view as inconsistent with settled copyright doctrine.³¹ This finding laid the groundwork for rejecting ROSS’s fair use defense: because the headnotes were protected expression, the court could proceed to assess whether the copying, even if intermediate, was justified.³² The outcome thus turned in large part on the court’s acceptance of the headnotes as original and copyrightable expression; a determination that has significant implications

²¹ *Thomson Reuters Enter. Ctr GmbH v. ROSS Intelligence, Inc.*, No. 1:20-cv-613-SB, slip op. at 13–17 (D. Del. Feb. 11, 2025)

²² See What are Headnotes?, Westlaw (Thomson Reuters), <https://legal.thomsonreuters.com/en/products/westlaw> (last visited July 9, 2025).

²³ Headnote,” Legal Info. Inst., Cornell L. Sch., <https://www.law.cornell.edu/wex/headnote> (last visited July 9, 2025).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Thomson Reuters*, slip op. at 13–14.

²⁷ *Id.* at 14–16.

²⁸ *Id.* at 15 (citing *Feist Publ’ns v. Rural Tel. Serv. Co.*, 499 U.S. 340, 344–45 (1991)).

²⁹ *Thomson Reuters*, slip op. at 15–16.

³⁰ *Id.* at 16–17.

³¹ *Id.* at 13.

³² *Id.* at 17–18.

for how courts might treat other forms of editorial or summarizing content used in AI training.

Nonetheless, the court's reasoning in *Ross* is not easily transposed to the domain of library metadata. Whereas Westlaw's headnotes involve editorial discretion, legal interpretation, and creative linguistic framing, attributes that the court found sufficient to meet the low threshold of originality under *Feist*, library metadata serves a fundamentally different function. Bibliographic records typically consist of standardized factual descriptors such as author, title, subject classification, and publication information. These elements are generated according to established schemas like MARC or Dublin Core and are designed to ensure consistency and interoperability across cataloging systems. Courts and the U.S. Copyright Office have long recognized that such metadata lacks the individualized expression necessary for copyright protection.³³ While catalogers may exercise professional judgment, that judgment operates within a highly structured framework intended to minimize subjective variation. Thus, unlike headnotes, which the *Ross* court viewed as creative distillations of judicial reasoning, library metadata remains closer to the category of uncopyrightable factual compilation that *Feist* explicitly placed outside the ambit of copyright law.

D. Application of Copyrightability Cases and Law to Library Metadata

Bibliographic metadata created by libraries is comprised largely of facts that facilitate access to materials in library collections, including title, author, publication date, and more. Examining this metadata through the lens of copyright law, and based on the U.S. Supreme Court and other cases analyzed above, the vast majority of this metadata would likely be evaluated through the *Feist* standard.

Under *Feist*, a work is original if it exhibits a minimal degree of creativity.³⁴ Because facts are not original, they are not eligible for protection. Further, cases have held that facts, whether "scientific, historical, biographical, [or] news of the day[,] ... 'may not be copyrighted and are part of the public domain available to every person.'"³⁵ Likewise, basic library metadata created merely to record critical factual information about an item in the library collection is not eligible for copyright.

Applying *Feist* to bibliographic metadata, which held that facts are not eligible for copyright protection, the likely conclusion is that the vast majority of bibliographic metadata would not be protectable under copyright.

³³ See *Feist*, *supra* note 12; CCC Information Services, Inc. v. Maclean Hunter Market Reports, Inc., 44 F.3d 61 (2d Cir. 1994)(the court arrangement of valuation data in a pricing guide could be copyrightable, it reaffirmed that raw factual data, even when compiled with effort or expertise, is not protected); Key Publications, Inc. v. Chinatown Today Publishing Enterprises, Inc., 945 F.2d 509 (2d Cir. 1991)(where the court held that a business directory's arrangement of listings involved sufficient creativity to be protected, but emphasized that the underlying metadata like business names, addresses, etc. was not copyrightable); Copyright Office, *Compendium of U.S. Copyright Office Practices (Third Edition)* § 313.4(B)(where the *Compendium* expressly states that "mere listings of ingredients, contents, or categories" are not protected and that "standardized factual information such as titles, names, or other data" does not satisfy the originality requirement.)

³⁴ *Feist*, *supra* note 12.

³⁵ *Novak v. Warner Bros. Pictures, LLC.*, 387 Fed. Appx. 747, 748 (9th Cir. 2010) (quoting *Feist* at 347–48).

However, there are two factors that should be noted. First, copyright could extend to the creative elements of *compilations of facts*, including the addition, selection, and arrangement of information that enable effective use. Second, metadata could, as part of its descriptive creation, contain material that goes beyond basic facts, which could be the “spark” of creativity that is copyrightable.

First, the Copyright Act defines a “compilation” as a work formed by the collection and assembling of preexisting materials or data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.³⁶ It is, therefore, possible to copyright a collection of copyright-free materials based solely on the selection, coordination, and arrangement of the material.

However, not all compilations are protected under copyright law. Whether a compilation is protectible depends on whether its selection, coordination, or arrangement as a whole constitutes an original work of authorship. In the *Feist* case, because the alphabetical white pages phone book did not constitute an “original work of authorship,” they were not protectible as a compilation. However, if there is a “spark” of originality in the selection, coordination, or arrangement,³⁷ there could be a copyright in the compilation itself, even if the underlying parts of that compilation are not under copyright. The copyright in such works as these are “thin”³⁸ and protects only the original organizational elements of the compilation itself.

Therefore, a compilation of data may nevertheless receive “thin” copyright protection if the data is arranged or compiled in sufficiently creative manner to qualify as copyrightable. The white pages telephone book in *Feist* was not copyright protectable.

As noted by the Court, “facts are not copyrightable”³⁹ and the alphabetical selection and arrangement of the white pages did not meet the statutory standard for copyright protection of a compilation. Indeed, the Court explained that “[t]he mere fact that a work is copyrighted does not mean that every element of the work may be protected.”⁴⁰ The principle equally applies to metadata, which generally includes facts such a title, author, or publication date relating to the information source described.

However, because metadata can include information beyond basic facts, it is also worth examining whether non-factual content rises to the level of originality required for copyright. Some of the content of metadata records may be copyrightable separately from the potential “thin” copyright in the compilation. Selection of subject headings, which categorize the subject matter of the item and allow end users to search by keyword and topic, for example, may reach the threshold for the requisite “spark” of creativity required for copyright protection.⁴¹ Catalogers have long recognized that unstructured subject headings, however, are less useful than controlled vocabularies, and subject headings are

³⁶ 17 U.S.C. § 101.

³⁷ *Feist*, 499 U.S. at 345.

³⁸ *Id.* at 349-350 (“As applied to a factual compilation, assuming the absence of original written expression, only the compiler’s selection and arrangement may be protected; the raw facts may be copied at will.”)

³⁹ *Id.* at 344.

⁴⁰ *Id.* at 348.

⁴¹ See, e.g., *Thomson Reuters v. Ross*, No. 1:20-cv-613-SB, slip op. at 8, *supra* at note 21 (discussing the copyrightability of the Westlaw Key Number System, a numerical subject taxonomy).

therefore not generally invented by individual catalogers, but are chosen from standardized controlled vocabularies.

Subject headings themselves are likely too minimally creative to receive independent copyright protection. Short phrases are considered uncopyrightable and will be rejected for copyright registration by the US Copyright Office.⁴² Subject headings usually consist of 1-4 descriptive words that identify a topic covered in the work being described, such as “Paleontology -- History”⁴³ or “Prehistoric peoples in art.”⁴⁴ These phrases are not chosen for their poetry or creative expression, *but are instead chosen to be as descriptive and editorially neutral as possible*.⁴⁵ Courts have rejected copyright protection for single words⁴⁶ and longer phrases such as “if no pulse, start CPR”⁴⁷ particularly when they are functional, rather than expressive.⁴⁸ While the copyrightability of library subject headings has never been directly evaluated by a court, they are short phrases that serve a functional purpose, and would likely be found uncopyrightable.

Abstracts consist of roughly a paragraph summary of the book or article, and are another subcomponent of metadata that may be independently copyrightable. Abstracts almost certainly contain the minimal creativity required for copyright protection under *Feist*. The creativity in the abstract, however, is not held by the person or entity that creates the metadata record, but is held by the copyright holder for the underlying work. Typically abstracts are written by the author of the work, and are included in the copyright status of that work (which may be held by the author, or have been transferred to a publisher). Reuse rights for abstracts can be surprisingly ambiguous; they are generally treated as marketing materials for the work and shared freely, but explicit reuse rights are not commonly described. While some publishers may specify that abstracts can

⁴² See 1 Nimmer on Copyright § 2.01 (2024); 37 CFR 202.1(a); *Arica Inst., Inc. v. Palmer*, 770 F. Supp. 188, 191–92 (S.D.N.Y. 1991), *aff’d*, 970 F.2d 1067, 1072 (2d Cir. 1992); *CMM Cable Rep, Inc. v. Ocean Coast Props., Inc.*, 97 F.3d 1504, 1519–20 (1st Cir. 1996) (“It is axiomatic that copyright law denies protection to fragmentary words and phrases and to forms of expression dictated solely as functional considerations on the grounds that these materials do not exhibit the minimal level of creativity necessary to warrant copyright protection.”) (internal quotation marks and citation omitted).

⁴³ *Paleontology--History*, LIBRARY OF CONGRESS, <https://id.loc.gov/authorities/subjects/sh2010104928.html> (last modified Mar. 24, 2010).

⁴⁴ *Prehistoric peoples in art*, LIBRARY OF CONGRESS,, <https://id.loc.gov/authorities/subjects/sh85080310.html> (last modified Mar. 4, 1999).

⁴⁵ Bias in subject headings is a frequent topic of academic study, which frequently reveals fallacies in the supposed neutrality of subject heading terms. See, e.g., Sara A. Howard & Steven A. Knowlton, *Browsing through Bias: The Library of Congress Classification and Subject Headings for African American Studies and LGBTQIA Studies*, LIBRARY TRENDS 67(1), 74–88 (2018), <https://dx.doi.org/10.1353/lib.2018.0026>; Grace Lo, “*Aliens*” vs. *Catalogers: Bias in the Library of Congress Subject Heading*, LEGAL REFERENCE SERVICES QUARTERLY, 38(4), 170–196 (2019), <https://doi.org/10.1080/0270319X.2019.1696069>; Grace Lo, *Biases in Law Library Subject Headings*, 101 B.U. L. REV. ONLINE 26 (2021). Even with these flaws, however, the objective of controlled cataloging vocabularies is to provide a short, accurate description of the topic that will enable other people to find it, rather than to express commentary or criticism.

⁴⁶ *Cortes v. Universal Music Latino*, 477 F. Supp. 3d 1290, 1298–99 (S.D. Fla. 2020).

⁴⁷ *Hutchins v. Zoll Med. Corp.*, 492 F.3d 1377, 1384–85 (Fed. Cir. 2007).

⁴⁸ *Id.*

be freely reused,⁴⁹ and some may also license metadata including abstracts to indexing services,⁵⁰ abstracts are also broadly shared beyond explicit license agreements.

Even in frameworks designed to support the open sharing of abstracts, reuse rights can be vague; for example, the Initiative for Open Abstracts (I4OA) advocates for open access to abstracts without any clarification on specific reuse rights.⁵¹ Where copyrightable content is included within a metadata record, such as with abstracts, it is excluded from the discussion in this paper. Abstracts can be safely excluded from this discussion, because the potential claimant to the rights in abstracts is the author or publisher, rather than the creator of the metadata record. Institutions implementing open metadata policies, however, should consider the scope of metadata fields covered by the policy. While the 520 field may be used to provide attribution to such abstracts or other description, it is also possible that publishers, vendors, and other stakeholders agree to dedicate these to the public domain as well, explicitly acknowledging the need and utility of unfettered sharing and utilization of the content.

The role of large language models (LLM) in cataloging is a recent development in cataloging practices. The Library of Congress itself has been experimenting with tools to improve reliability and efficiency in cataloging materials.⁵² In response to attempts to copyright content generated by LLMs, the Copyright Office issued a report clarifying that content created by LLMs without human intervention did not meet the test for copyrightability.⁵³ As authors and publishers turn to LLM tools to generate summaries and other metadata for Copyright in Publication records that are widely distributed, there may be a greater need to understand who authored summaries present in bibliographic records and what copyright claims a copyright holder asserts. This additional complexity

⁴⁹ See, e.g., Pre-Approved Permission Requests, SAGE, <https://us.sagepub.com/en-us/nam/pre-approved-permission-requests-journals> [<https://perma.cc/HX3A-CKTR>] (last visited Nov. 1, 2024). See also, Initiative for Open Abstracts, <https://i4oa.org/#openabstracts> [<https://perma.cc/EM3L-XYJQ>] (last visited Nov. 1, 2024).

⁵⁰ See, e.g., Partnerships, OCLC, <https://www.oclc.org/en/partners-for-libraries.html> [<https://perma.cc/4HX5-DPVM>] (last visited Nov. 1, 2024). (“More than 350 publishers and aggregators make metadata, cover art, tables of contents, summaries or reviews available about their electronic, digital and print resources through WorldCat, the WorldCat knowledge base and WorldShare applications.”)

⁵¹ Frequently Asked Questions, INITIATIVE FOR OPEN ABSTRACTS, <https://i4oa.org/faqs.html> [<https://perma.cc/SK93-6YYY>] (last visited Nov. 1, 2024). (“Under what license terms are abstracts made available? Crossref exposes article metadata and abstracts without a specific license, but reminds users that abstracts may be subject to copyright that precludes republication unless the license under which it is originally published permits such republication.”).

⁵² Isabel Brador, *Could Artificial Intelligence Help Catalog Thousands of Digital Library Books? An Interview with Abigail Potter and Caroline Saccucci*, The Signal (November 19, 2024), <https://blogs.loc.gov/thesignal/2024/11/could-artificial-intelligence-help-catalog-thousands-of-digital-library-books-an-interview-with-abigail-potter-and-caroline-saccucci/> [<https://perma.cc/X5W6-Y26G>].

⁵³ U.S. Copyright Office, Copyright and Artificial Intelligence Part 2: Copyrightability, (Jan. 2025), <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf> [<https://perma.cc/B7HT-4YJY>].

in understanding copyright status for abstracts and summaries could be clarified by an industry-wide approach to open licensing that standardizes the approach to copyright for human-generated content and removes conflicts between its potential copyrightability and the public domain status of machine-generated content in the same metadata fields serving the same purpose.

E. Metadata Copyrightability Claims - OCLC

As established above, many elements of a catalog record are facts which cannot be protected, however there may be some basis for establishing a “thin” copyright in some aspects of a record or constituent parts of a record.

This is not a new question for libraries or for OCLC, the organization that most prominently coordinates metadata sharing and has recently increased their claims to having a proprietary interest in library metadata. OCLC was founded in 1967 as the Ohio College Library Center, later renaming itself to the Online Computer Library Center (OCLC). OCLC, together with thousands of its member libraries, cooperatively produce and maintain WorldCat, the largest online public access library catalog in the world. OCLC is funded mainly by the fees that libraries pay (as reported in 2022, around \$219.5 million annually⁵⁴) for the many different services it offers.

In 1983 OCLC filed for copyright of its entire bibliographic database as a “compilation.”⁵⁵ At the time this was viewed as a highly controversial attempt to gain some copyright control over all the records created and shared by OCLC members.⁵⁶ The member libraries strongly objected to OCLC's claim of copyright since it is the member libraries themselves that contribute the cataloging records to the database. The President of OCLC claimed at the time that the purpose of registering the copyright in the database was to protect it from misappropriation by nonmembers and other database producers.⁵⁷ The Library of Congress eventually registered the copyright, *but specifically limited the*

⁵⁴ *Break Through: OCLC Annual Report 2021-2022*, OCLC (2022), <https://www.oclc.org/en/annual-report/2022/home.html> [<https://perma.cc/BE5Q-7LVU>].

⁵⁵ Under copyright law, copyright in a compilation of data extends only to the selection, coordination or arrangement of the materials or data, but not to the data itself. OCLC was also not the first to create copyright controversy in the library world. In 1876 Melvil Dewey registered the copyright in his Dewey Decimal Classification system and later transferred ownership to the Lake Placid Club Education Foundation, asserting proprietary rights over a tool used widely in public libraries at the time. The copyright in the Dewey Decimal System was later acquired by OCLC in 1988. See, e.g. John P. Comaromi, *The Eighteen Editions of the Dewey Decimal Classification* 88 (1976); Sanford Berman, *Prejudices and Antipathies: A Tract on the LC Subject Heads Concerning People* xviii–xx (Scarecrow Press rev. ed. 1993) (1971).

⁵⁶ See, e.g., Dr. Herbert J. Grover, Wisconsin State Superintendent of the Department of Public Instruction, *Letter to the Wisconsin Attorney General of June 5, 1985*, reprinted in Opinion No. OAG 27-86, 75 OPINIONS OF THE ATTORNEY GENERAL OF THE STATE OF WISCONSIN 133, 134 (Aug. 12, 1986) (“The legality and extent of the copyright have not been determined and OCLC's actions in filing for the copyright have created much concern and dissent among OCLC-member libraries.”).

⁵⁷ Laura N. Gasaway, *Copyright Ownership & the Impact on Academic Libraries*, 13 DEPAUL-LCA J. ART. & ENT. L. 277, 283, n. 9 (2003).

registration to the online compilation only, and indicated that any competing copyright claims would also be registered.⁵⁸

OCLC assigns a unique control number (referred to as an "OCN" for "OCLC Control Number") to each new bibliographic record in WorldCat. Numbers are assigned serially. The control numbers link WorldCat's records to local library system records by providing a common reference key for a record across libraries.

In September 2013, the OCLC declared these numbers to be in the public domain, as documented by Jim Michalko in a post on the *Hanging Together* blog.⁵⁹ OCLC further clarified its position on this issue as follows: "OCLC encourages the use of the OCLC Control Number in any appropriate library application, where it can be treated as if it is in the public domain."⁶⁰ However, OCLC also recommended that metadata be released under an ODC-BY license, which is discussed further below.

Applying the basic reasoning of cases like *Feist*, *Meshworks*, *Matthew Bender Co.*, and *Assessment Technologies* to the OCLC claims of copyright, it would appear that a court would find no copyright to the bibliographic metadata records in the OCLC database. The bibliographic records themselves "lack the modicum of creativity necessary to transform mere selection into copyrightable expression."⁶¹ Using the legal rationale from *Feist*, while OCLC clearly "expended sufficient effort" to make the Worldcat database of bibliographic records useful, it is "insufficient creativity to make it original."⁶²

In light of this, while OCLC's role in aggregating and maintaining the WorldCat database might be viewed as a collection activity, it may fall short of the kind of industrious and independent effort required to establish copyright protection in a compilation. This is because many of OCLC's member libraries, not OCLC itself, actually create, select, and input the bibliographic records that comprise the database. Often members are the ones who contribute, edit, and update the entries, meaning that the creative and organizational labor resides primarily with them. OCLC could be viewed as more as a host or conduit for the collective efforts of its members, rather than the originator of a protectable compilation.

⁵⁸ United States Copyright Office Public Catalog, [OCLC Online Bibliographic Database]: Copyright Registration Number TX0001285902 (Dec. 22, 1982) [<https://perma.cc/B9QB-GUVH>].

⁵⁹ Jim Michalko, *OCLC Control Numbers – Lots of them; all public domain*, HANGING TOGETHER BLOG (Sept. 23, 2013) [<https://hangingtogether.org/oclc-control-numbers-lots-of-them-all-public-domain/>] [<https://perma.cc/744B-PGVV>]. See also Richard Wallis, *OCLC Declare OCLC Control Numbers Public Domain*, DATA LIBERATE (Sept. 24, 2013) [<https://www.dataliberate.com/2013/09/24/oclc-declare-oclc-control-numbers-public-domain/>] [<https://perma.cc/7G5P-7PZF>].

⁶⁰ Note that the qualifier "as if" is confusing to use in such an announcement. However, If an item can be used "as if" it is in the public domain, then it is not infringement to use the item. See *Report Objects M-P: OCLC Number*, OCLC, [https://help.oclc.org/Library_Management/WorldShare_Reports/Report_objects/Report_objects_A_to_Z/Report_objects_M-P#O] [<https://perma.cc/C8MX-BNTR>].

⁶¹ *Feist*, 499 U.S. at 362-63.

⁶² *Id.*

III. LICENSING, CONTRACTS, AND METADATA

Even when metadata is not subject to copyright protection, library metadata is still potentially vulnerable to restrictions imposed through legal agreements. Library metadata exists within a complex ecosystem of creation, curation, acquisition, and quality assurance, frequently involving multiple parties and contracts. If any of those contracts include restrictions on subsequent reuse of the metadata, then a library risks liability for breach of contract if they exceed the scope of the permitted use.

A. Licensing and Contract Basics

When two parties enter a contractual agreement, they agree to be bound by the terms of that contract. If one party's actions violate those terms, that party could be sued for breach of contract.

If the contract is a license to use copyrighted content, breach of contract claims can be brought in addition to any copyright claims: although a reuse of copyrighted material may not be copyright infringement (for example, because the use constitutes fair use), such reuse could still lead to liability for breach of the contract terms. If anything, contractual restrictions on reuse are likely to be stronger when the copyright protection of the underlying content is weaker, because the party controlling access to the content knows that they cannot rely on copyright to protect their content and will consequently insist on stronger contractual limitations.

In an ideal world, contract terms reflect a carefully negotiated balance of the interests of both parties, with full understanding and agreement on both sides. In practice, many things upset that balance: inequality of bargaining power, access to legal review, and administrative bandwidth can all contribute to parties agreeing to contract terms that are less than ideal or even counter to their own interests. A library with limited staff capacity may have little choice in accepting unfavorable contract terms when negotiating against an entity that holds monopolistic power over services necessary to library operations.

B. Licenses for Open Metadata

Libraries that wish to facilitate the reuse of metadata in the face of potential copyright and contractual concerns can release their metadata under an open license. Open licensing clarifies reuse rights for downstream users, but does not change the underlying copyright status of the data. In other words, if the data is not copyrightable, then there is nothing to license. If the copyright status is ambiguous or contested, however, application of an open license assists a downstream user in determining uncontested user rights.

The following sections describe several open data licenses that have been proposed for use with library metadata.

1. CC0

The Creative Commons 1.0 Universal (CC0 1.0) Public Domain Dedication is a legal instrument allowing a rightsholder to “(waive) all of his or her rights to the work worldwide under copyright law, including all related and neighboring rights, to the extent

allowed by law.”⁶³ As we have established, metadata is primarily, and arguably exclusively, made up of facts regarding library holdings. Because of the occasional question of copyrightability of these assemblages of facts, both in the United States and in other jurisdictions, using a CC0 Public Domain Dedication makes clear that all rights to the material, regardless of detail or local law, are surrendered. While not up to date, Creative Commons keeps an extensive list of policies from institutions around the world who have applied the CC0 dedication in some fashion to their metadata or other data collections.⁶⁴ A CC0 dedication allows for the broadest possible reuse rights in the data.

2. CC-BY

The Creative Commons Attribution 4.0 International License (CC BY 4.0)⁶⁵ provides the ability to share and adapt copyrightable works freely, so long as the rights-holder is acknowledged. Insofar as metadata is copyrightable, applying this license to library metadata would require attribution wherever the metadata is used or displayed. When applied to a database, the CC-BY license would apply to “the database structure (its selection and arrangement, to the extent copyrightable), its contents (if copyrightable), and in those instances where the database maker has *sui generis* database rights,⁶⁶ to the rights that are granted to those makers.”⁶⁷ An attribution requirement, while relatively minimal, has been criticized when applied to the contents of a database, however, because of the difficulty of accurately tracking attribution across mixed data sources.⁶⁸

3. ODC-BY

The Open Data Commons Attribution License (ODC-BY) is “a license agreement intended to allow users to freely share, modify, and use [the] Database subject only to

⁶³ *CC0 1.0 Universal*, CREATIVE COMMONS, <https://creativecommons.org/publicdomain/zero/1.0/> [<https://perma.cc/YS8G-CQ86>] (last visited July 16, 2025).

⁶⁴ *CC0 Use for Data*, CC WIKI (Dec. 3, 2014), https://wiki.creativecommons.org/wiki/CC0_use_for_data [<https://perma.cc/48CG-9C5Z>].

⁶⁵ Attribution 4.0 International Deed, Creative Commons, <https://creativecommons.org/publicdomain/zero/1.0/> (last visited July 16, 2025).

⁶⁶ *Sui generis* database rights, which are recognized in some non-U.S. jurisdictions, are property rights that are similar to, but distinct from, copyright.

⁶⁷ *Data: How Do I Apply a CC Legal Tool to a Database?*, CC WIKI (Oct. 23, 2019), https://wiki.creativecommons.org/wiki/data#When_a_CC_license_is_applied_to_a_database.2C_w_hat_is_being_licensed.3F [<https://perma.cc/KD9N-E7R3>].

⁶⁸ See, e.g., Timothy Vollmer et al., *Library Catalog Metadata: Open Licensing or Public Domain?*, CREATIVE COMMONS WEBLOG (Aug. 14, 2012), <https://creativecommons.org/2012/08/14/library-catalog-metadata-open-licensing-or-public-domain> [<https://perma.cc/6ADM-OZF7>]; Katie Fortney, University of California Office of Scholarly Communication, *CC BY and Data: Not Always a Good Fit*, UNIV. CAL. OFFICE OF SCHOLARLY COMMUNICATION (Sept. 15, 2016), <https://osc.universityofcalifornia.edu/2016/09/cc-by-and-data-not-always-a-good-fit/> [<https://perma.cc/P26L-ASMY>]; Ignasi Labastida & Thomas Margoni, *Licensing FAIR Data for Reuse*, 2 DATA INTELLIGENCE 199 (2020), https://doi.org/10.1162/dint_a_00042 [<https://perma.cc/6AQF-RTJR>].

[attribution requirements].”⁶⁹ Notably, the license “only governs the rights over the Database, and not the contents of the Database individually.”⁷⁰ To extrapolate, the license applies to the structure and organization of data in order to provide a tool to open databases that are subject to *sui generis* database rights. As explained by Creative Commons, “The ODC licenses apply only to *sui generis* database rights and any copyright in the database structure. These licenses do not apply to the individual contents of the database.”⁷¹

OCLC has specifically recommended the ODC-BY license for library metadata.⁷² However, as the database rights to which it applies do not exist in the United States, its applicability to the contents of metadata records is questionable. OCLC has stated that using the ODC-BY license will allow members who share their records to communicate the provenance of the underlying data, as well as communicate the responsibilities around reuse outlined in OCLC’s community norms, the *WorldCat Rights and Responsibilities for the OCLC Cooperative (WCRR)*,⁷³ which are discussed further below. However, as there is no evidence to suggest that OCLC has itself applied an ODC-BY license to the records it releases could be identified prior to the writing of this report,⁷⁴ its claim of interest in directing members to share records using this license is thin.

In response to OCLC’s recommendation⁷⁵ that libraries adopt the ODC-BY license, Timothy Vollmer (who was then Senior Manager of Public Policy at Creative Commons, and is now Scholarly Communications and Copyright Librarian at UC Berkeley) and colleagues wrote an overview of relevant issues and compared potential application of the ODC-BY license against a CC0 public domain dedication.⁷⁶ They point out the ambiguities using an ODC-BY license may create, as well as the likely applicability of that license to metadata records, concluding that,

...a truly *normative* approach for the library community would be a public domain dedication such as CC0, coupled with requests to provide attribution to the source (e.g.

⁶⁹ *Open Data Commons Attribution License (ODC-By) v1.0*, OPEN KNOWLEDGE FOUND., <https://opendatacommons.org/licenses/by/1-0/> [<https://perma.cc/8YOZ-RPDT>] (last visited July 16, 2025).

⁷⁰ *Id.*

⁷¹ *Data*, CC WIKI (Oct. 23, 2019), <https://wiki.creativecommons.org/wiki/data> [<https://perma.cc/GM9T-PDLF>].

⁷² Bob Murphy, *OCLC Provides Downloadable Linked Data File for the 1 Million Most Widely Held Works in WorldCat*, OCLC (Aug. 14, 2012), <https://cdm15003.contentdm.oclc.org/digital/collection/p15003coll6/id/2826> [<https://perma.cc/25X2-UTCA>].

⁷³ *WorldCat Rights and Responsibilities for the OCLC Cooperative*, OCLC (June 2, 2010), <https://www.oclc.org/en/worldcat/cooperative-quality/policy.html> [<https://perma.cc/Q6EL-Y7HN>] [hereinafter *OCLC WCRR*].

⁷⁴ An initial press release from OCLC in 2012 announced that OCLC would be releasing data under the ODC-BY license, however as of 2023 OCLC data does not appear to include this designation.

⁷⁵ Bob Murphy, *OCLC Recommends Open Data Commons Attribution License (ODC-BY) for WorldCat Data*, OCLC (Aug. 6, 2012), <https://cdm15003.contentdm.oclc.org/digital/collection/p15003coll6/id/2830> [<https://perma.cc/U5PR-V65G>] [hereinafter *OCLC ODC-BY Press Release*].

⁷⁶ Vollmer et al., *supra* note 68.

OCLC) to the extent possible. Such an approach would maximize experimentation and innovation with the cataloging data, in keeping with the mission and values of the library community, while respecting the investment of OCLC and the library community in this valuable resource.⁷⁷

C. OCLC's Contractual terms

OCLC provides the services that most US libraries use to populate their library catalogs. OCLC acquires metadata from member libraries and vendors, and then redistributes them to their subscribers, subject to the terms of the subscription contract.

1. OCLC Framework Agreement

OCLC's standard *Framework Agreement* is available, as of November 2024, through the OCLC website.⁷⁸ While some libraries have succeeded at negotiating different terms for some provisions, the standard Agreement provides a reasonable starting point for assessing OCLC's contractual claims.⁷⁹

In absence of an executed Agreement, OCLC inserts the following statement at the bottom of invoices sent to library customers:

This transaction is subject to the relevant OCLC Framework Agreement ("FA") and the Schedules related to each product listed on this notice, found at: <http://oclc.org/service-agreements>, unless a signed agreement governing the transaction has been entered into by the parties. OCLC's acceptance of Customer's order is expressly conditional on Customer's assent to such terms and conditions, which Customer will manifest through its acceptance of OCLC Products and/or Services.⁸⁰

This insertion means that libraries that have not negotiated a contract are effectively agreeing to the standard unmodified terms, which can be problematic for the many libraries that do not have resources available for contract negotiation.

Several portions of the Agreement are relevant to determining ownership and reuse rights for metadata passing between OCLC and the signatory library:

Section 5 of the Agreement deals with ownership and licenses, specifically:

⁷⁷ *Id.*

⁷⁸ OCLC, *OCLC Framework Agreement* (July 2024), <https://policies.oclc.org/content/dam/legal/framework/OCLC-Framework-Agreement-Loc-NL-EN-US.pdf> [<https://perma.cc/TD46-J6PC>] [hereinafter *Agreement*].

⁷⁹ The standard, unmodified Agreement is also what OCLC asserted as their standard terms in the *OCLC v. Clarivate* lawsuit, discussed below.

⁸⁰ The quote provided is the most recent version of this language found by the authors. Similar language can be found in publicly available OCLC invoices. See, e.g., *Resolution to Renew OCLC Cataloging, Worldshare ILL and Access Subscription Services*, CLEV. PUB. LIBR (May 14, 2024), https://cpl.org/wp-content/uploads/board/20240516_Ex02_OCLC-Subscription-Renewal-w-attach-1.pdf [<https://perma.cc/8DPT-VKR8>].

5.1 Ownership

a): **OCLC Intellectual Property.** OCLC and/or its licensors or suppliers are the exclusive owners of and retain all right, title, and interest (including all copyrights, trademarks, patents, and any other proprietary rights) to the Products, Services, WorldCat, and all other materials produced or provided by OCLC. All rights not expressly granted by OCLC are reserved.

b): **Institution Data.** Institution, and/or its suppliers and affiliates, retains all right, title and interest (including, without limitation, all proprietary rights) to Institution Data, except for rights granted to OCLC and its affiliates under this Agreement. Institution is solely responsible for the accuracy, completeness, and legality of Institution Data. Institution is responsible for obtaining all permission and other rights necessary to provide Institution Data to OCLC. Institution will not provide OCLC with Institution Data that Institution does not have the right to provide for use in connection with the Products or Services.⁸¹

“Products,” “Services,” and “WorldCat” are all defined terms in this contract. “WorldCat” is the defined term relevant to this discussion, and is defined as “the databases of Bibliographic Data, Holdings Data, and related files maintained by OCLC.”⁸² “Bibliographic Data” is in turn defined as “all the bibliographic data (including subject data, such as local keywords and subject headings), descriptive metadata, relationship metadata and other metadata of the type stored in WorldCat.”⁸³

Through sections 5.1(a) and 5.1(b), the contract lays out an allocation of rights between OCLC and the signing institution, wherein the institution retains rights to bibliographic metadata the institution creates, and OCLC and its suppliers (frequently other libraries, under a similar Agreement) retain rights to metadata “produced or provided by” OCLC.⁸⁴

Section 5.2(b) then addresses the license that the library gives to OCLC for reuse of metadata created by the institution:

5.2 Licenses.

[...]

b) **Institution Data.** [...] Institution grants OCLC, OCLC participants, non-participant users, and OCLC designees a global, perpetual, non-exclusive, royalty-free, transferable, and sub-licensable right to host, reproduce, transmit, store, publish, distribute, modify, create derivative works from, and otherwise use Shared Data.⁸⁵

“Institution Data” is defined in section 3.4 as “(i) the Holdings Data⁸⁶ in relation to Institution’s collection; (ii) all the data that forms part of the library process or the internal operations of the Institution, such as circulation, patron, and acquisition data; and

⁸¹ *OCLC Agreement*, *supra* note 78, at § 5.1.

⁸² *Id.* at § 3.12.

⁸³ *Id.* at § 3.1.

⁸⁴ *Id.* at §§ 5.1(a)-(b).

⁸⁵ *Id.* at § 5.2(b).

⁸⁶ The agreement defines “holdings data” as “all the ownership and license data in relation to the Institution’s collection (including electronic resources).” *Id.* at § 3.2.

(iii) all other data and content that is produced, sent or reproduced through the Services by the Institution or made available to OCLC in connection with the Services.”⁸⁷ “Institution Data” which the library shares with OCLC then, in clause 5.2(b), becomes “Shared Data,” which the library is granting OCLC and third-party users permission to use.⁸⁸ “Shared Data” is defined in section 3.10 as “the Institution Data made available by Institution to the public or to third parties selected by the Institution (such as other participants or users) or that by its nature is intended for use outside the Institution’s organization, such as Bibliographic Data, Holdings Data, and other data not considered Internal Data.”⁸⁹

Insofar as metadata is copyrightable, both parties retain copyright to metadata they create. Metadata created by the library is broadly and non-exclusively licensed to OCLC and third-party users, and OCLC is also authorized to sublicense the metadata to other institutions. These contract provisions do not restrict the use of uncopyrightable content.

Additional information relative to OCLC metadata is provided in a Schedule to the Agreement that describes OCLC’s metadata product, *Schedule 2: WorldShare® Metadata/OCLC Cataloging (Schedule 2)*, which is also available in standard form online.⁹⁰ This schedule covers the metadata that the institution provides to OCLC.

In section 3 of *Schedule 2*, the signing institution agrees:

3.2 Institution using the Systems for cataloging agrees to abide by the Principles and the Guidelines.

3.3 Institution agrees that the use and transfer by the Institution of WorldCat Data is subject to the Policy.⁹¹

The “Principles” referred to in section 3.2 is the *WorldCat Principles of Cooperation*,⁹² and the “Policy” referred to in section 3.3 is the *WorldCat Rights and Responsibilities for the OCLC Cooperative (WCRR)*,⁹³ both of which are available online.

In the *OCLC v. Clarivate* lawsuit, discussed further below, OCLC argued, and the court, to an extent, agreed, that this structure incorporates the *WCRR* into the Agreement signed by participating libraries.⁹⁴ Further description of the *WCRR* is provided below.

⁸⁷ *Id.* at § 3.4.

⁸⁸ *Id.* at § 5.2(b).

⁸⁹ *Id.* at § 3.10.

⁹⁰ *Schedule 2: WorldShare® Metadata/OCLC Cataloging*, OCLC (May 2021), https://policies.oclc.org/content/dam/legal/schedules/en_us/Schedule-02-WorldShare-Metadata-OC-LC-Cataloging-EN-US.pdf [https://perma.cc/L5VF-6GTJ] [hereinafter *OCLC Schedule 2*].

⁹¹ *Id.* at §§ 3.2-3.2.

⁹² OCLC, *WorldCat Principles of Cooperation*, OCLC (June 21, 2010), <https://www.oclc.org/content/dam/oclc/worldcat/documents/principles-of-cooperation.pdf> [https://perma.cc/CC4V-QQWU]. The *WorldCat Principles of Cooperation* also states that members “make a commitment” to “use WorldCat records in accordance with” the Rights and Responsibilities statement referred to in section 3.3 of *Schedule 2*. *Id.* at 1.

⁹³ *OCLC WCRR*, *supra* note 73.

⁹⁴ *See infra* notes 104-119 and accompanying text.

Schedule 3 of the agreement is also relevant to this analysis, since it covers the WorldCat Discovery Services, which is the service by which libraries receive records from OCLC. Schedule 3 is more direct in adding contractual restrictions on reuse of metadata:

3.2 Bibliographic Data. Bibliographic Data may not be stored other than temporarily as required for use authorized by the Agreement and shall not be otherwise transferred or accessed by any other person not an Authorized User.

3.3 Cataloging Prohibited. Use of the Service for cataloging purposes is expressly prohibited. Institution may not resell the Service or the Bibliographic Data or other content accessible through the Service.⁹⁵

These provisions are less clear than they may initially appear, however. Section 3.2 prohibits use of the Discovery Service to obtain and store metadata for any use beyond the scope of the subscription agreement. Interestingly, “Authorized User,” while capitalized here, is not a defined term in this schedule or in the main body of the Agreement,⁹⁶ and its appearance here is hard to reconcile. In a subscription for ebooks, for example, “Authorized User” would be defined as the library patrons authorized to access a subscription resource. Access to library catalogs is not, however, typically limited to library card holders or the faculty, students and staff of an institution; library catalogs are typically freely accessible to anyone. Indeed, the product description for WorldCat Discovery Service, and a selling point for the service, is that “A FirstSearch/WorldCat Discovery subscription gives the public access to a library's collections maintained in WorldCat through WorldCat Discovery, WorldCat.org and websites of OCLC partners, such as Google Books, Goodreads, Wikipedia, etc.”⁹⁷ The Bibliographic Data provided through the WorldCat Discovery Service clearly *is* intended to be accessed by anyone accessing a subscriber's catalog, but if anyone who has access to the catalog is an “Authorized User,” then the restriction is meaningless.⁹⁸

Section 3.3 is similarly unclear. “Cataloging purposes” is not a defined term, and the Service is being provided specifically to populate the subscriber's catalog, so that is clearly not what is being prohibited. Likely both this and 3.2 are intended to prohibit use of the metadata outside of the subscriber's library catalog, but this is not very clearly

⁹⁵ *Schedule 3: WorldCat® WorldCat® Discovery Services*, OCLC (May 2021), https://policies.oclc.org/content/dam/legal/schedules/en_us/Schedule-03-WorldCat-Discovery-Services-EN-US.pdf [https://perma.cc/TCL6-8KRN] [hereinafter *OCLC Schedule 3*].

⁹⁶ Section 2 of Schedule 3 provides that “All capitalized terms not defined herein shall have the same meaning ascribed to them in the Framework Agreement.” *Id.* at 2.

⁹⁷ *WorldCat Discovery resources*, OCLC, <https://www.oclc.org/en/worldcat-discovery/resources.html> [https://perma.cc/2VRY-6SQ9] (last visited Nov. 1, 2024).

⁹⁸ The only other relevant provision that addresses authorized users (lower case) is section 11.2 of the Agreement, which covers security around log-in credentials and provides that “Institution is responsible for authorizing user access to the Products or Services, assigning privileges, and creating, maintaining, and terminating accounts.” This clearly applies to backend librarian accounts used to administer the Service, not to general access to the catalog, and, moreover, makes the Institution responsible for deciding who constitutes an “authorized user.” *OCLC Agreement*, *supra* note 78, at § 11.2.

conveyed. The prohibition against reselling is clear, but the scope of permitted sharing - in a library catalog that is intended by both parties to be freely available to anyone with an internet connection - is not.

Another example of OCLC’s attempt to control metadata in its system is the service for Vendor Branded Record (VBR) Licenses⁹⁹ which they currently provide to many libraries.

The VBR License asserts an active copyright in OCLC-created records. The parts that cause concern are reflected in **bolded** portions of Section 2 and 3 (and reference to 5.1) in this VBR License:

2. Copyright.

2.1. All VBRs (Vendor Branded Record created by OCLC, which is based on the MARC 21 bibliographic record format) pursuant to its VBR Service **are © OCLC, Inc., under the laws of the United States, at the time they are first created.** No VBR may be used in a manner contrary to the terms of this License.¹⁰⁰

3. License

3.1. Grant. This License explicitly affirms a Licensee’s unlimited right to copy, modify, convey, edit, and use VBRs, subject exclusively to the limitations described in Section 5.1. **This License, however, shall under no circumstances be interpreted to dispossess OCLC of its copyright in a VBR, or as an assignment of the copyright in a VBR to the public domain, or as an abandonment of the copyright.**¹⁰¹

5. Restrictions.

5.1 Limited Fields. A Licensee may add additional new MARC fields with the same tag as a Limited Field. Further, a Licensee may modify the fields with the same tag as a Limited Field which were added by that Licensee. **However, no Licensee may modify, alter, or remove, in any manner, the Limited Fields that are not the original contribution of the Licensee.**¹⁰²

It is clear that OCLC is claiming copyright over their records created for the VBR License in Section 2.1 and are also claiming that a library can’t dedicate the records to the public domain. This also introduces the complication of license language inserted into metadata records directly: a catalog search can easily find records that had language in the 588 field that say “OCLC-licensed vendor bibliographic record.”

2. OCLC WorldCat Rights and Responsibilities (WCRR) Statement

The OCLC *WCRR* followed after the original "Guidelines for Use and Transfer of OCLC Derived Records," that was developed in 1987,¹⁰³ and was written by the Record Use Policy Council, a specialized group charged by the OCLC Board of Trustees with the

⁹⁹ OCLC, Inc. *Vendor Branded Record License*, OCLC (last visited July 16, 2025), <https://www.oclc.org/content/dam/oclc/forms/terms/vbri-201703.pdf> [https://perma.cc/J2YY-8NHL] [hereinafter *VBR License*].

¹⁰⁰ *Id.* at § 2.

¹⁰¹ *Id.* at § 3.

¹⁰² *Id.* at § 5.

¹⁰³ See *OCLC Policy Change*, CODE {4} LIB WIKI (Feb. 14, 2013), https://wiki.code4lib.org/OCLC_Policy_Change [https://perma.cc/J3L6-M5RG].

task of updating the 1987 guidelines.¹⁰⁴ The *WCRR* was finalized in 2010. In its own terms, the statement describes that “[t]he policy’s intent is to encourage the widespread use of WorldCat bibliographic data while also supporting the ongoing and long-term viability and utility of WorldCat and of WorldCat-based services such as resource sharing, cataloging, and discovery.”¹⁰⁵

Section 3(B) of the *WCRR* defines the “responsibilities of OCLC members,” including:

4. Make reasonable efforts to attribute the OCLC cooperative as a contributor in works or services based substantially on WorldCat data.¹⁰⁶
5. Make reasonable efforts to ensure that the subsequent re-use and transfer of their WorldCat data by non-members is consistent with this policy and OCLC’s public purposes and supports the long-term viability and utility of WorldCat.¹⁰⁷

And

6. Encourage and practice responsible use of OCLC systems and services, including:[...]
 - b. not engaging in mass downloading from WorldCat without OCLC’s prior written consent;
 - c. not engaging in mass distribution of data directly from WorldCat to non-members without OCLC’s prior consent;
 - d. not engaging in other activities that diminish the value of WorldCat to the OCLC cooperative.¹⁰⁸

3(B)(4) can be characterized as a soft attribution requirement, asking that member organizations use “reasonable efforts” to provide attribution to OCLC for services “based substantially” on data from OCLC.¹⁰⁹ The *WCRR* notably does not include any explicit licensing requirements for metadata releases, such as an ODC-BY or CC-BY license.

3(B)(5) carries those requirements through to subsequent downstream users, again applying a “reasonable efforts” standard to the member organization to bind those downstream users to behavior consistent with the policy document.¹¹⁰

Interpretation of this section is directly applicable to those rights that metadata-creating institutions apply to the collection of metadata (generally obtained from a mix of sources, including OCLC WorldCat) used by their own institution. While OCLC has previously taken the position that implementation of these provisions is up to the discretion of the member institution,¹¹¹ they have recently shifted to an interpretation,

¹⁰⁴ See *OCLC Record Use Policy Update*, OCLC RECORD USE POLICY COUNCIL (Apr. 2010), https://www.oclc.org/content/dam/oclc/events/2010/files/global/younger_update.pdf [https://perma.cc/4HKU-3RX9].

¹⁰⁵ *OCLC WCRR*, *supra* note 73, at § 1.

¹⁰⁶ *Id.* at § 3(B)(4).

¹⁰⁷ *Id.* at § 3(B)(5).

¹⁰⁸ *Id.* at §§ 3(B)(6)(b)-(d).

¹⁰⁹ *Id.* at § 3(B)(4).

¹¹⁰ *Id.* at § 3(B)(5).

¹¹¹ See *OCLC Linked Data Attribution Guidelines*, OCLC (2012), <https://web.archive.org/web/20121004165832/http://www.oclc.org/us/en/data/attribution.html>

which formed the basis of their argument in their 2022 lawsuit against Clarivate, that this document mandates attribution-based licensing of any institutional metadata which has passed through OCLC.¹¹²

In addition to attribution, section 3(B)(5) of the *WCRR* arguably also includes an anticompetitive requirement for downstream uses of metadata which has passed through OCLC by stating that downstream uses should “support[] the long-term viability and utility of WorldCat.”¹¹³ This is echoed in 3(B)(6)(d), in which member organizations should “encourage” “not engaging in other activities that diminish the value of WorldCat to the OCLC cooperative.”¹¹⁴

Additionally, other requirements in 3(B)(6)(b) and (c) specify that member institutions should obtain written consent from OCLC before engaging in bulk downloads and distributions of data from WorldCat.¹¹⁵

3. Addressing Disputed Use of WorldCat Data by Members

Section 1(J) of the *WCRR* identifies the policy objective, to “Define the steps OCLC and OCLC governance can take when disputes arise regarding use of WorldCat data.” This is spelled out in further detail in Section 5, laying out broad and vague terms for conflict resolution over the use of records.

OCLC member use of data extracted from the WorldCat database is carried out in a diverse and rapidly-changing environment. It is, therefore, impossible to anticipate all of the conceivable uses to which members might want or need to put WorldCat data. **OCLC members are encouraged to discuss with OCLC any uses that do not appear to be covered by this policy.** If a particular use is determined to not be covered, OCLC and the member will seek a mutually agreeable resolution of the matter. If either party believes that timely resolution cannot be reached, then the matter will follow resolution and/or arbitration procedures to be determined by the Global Council and the Board of Trustees.¹¹⁶(emphasis added).

This approach aims to make the policy adaptable to a range of unforeseen member uses of WorldCat data. By framing consultation with OCLC as a *suggestion* rather than an *obligation*, the policy allows members flexibility and does not mandate participation in the resolution process should they decide to proceed independently or choose not to consult OCLC prior to introducing new uses of the data. Even for those institutions bound by the *WCRR* through the Framework Agreement or other contractual means—and certainly for those not contractually committed—the outlined arbitration process appears to be available as an option rather than a compulsory course of action.

[<https://perma.cc/Y6AC-SPFU>]. See also *infra* notes 119-103 and accompanying text, on the relationship between OCLC and Harvard.

¹¹² See *infra* notes 104-119 and accompanying text.

¹¹³ *OCLC WCRR*, *supra* note 73, at § 3(B)(5).

¹¹⁴ *Id.* at § 3(B)(6)(d).

¹¹⁵ *Id.* at §§ 3(B)(6)(b)-(c).

¹¹⁶ *Id.* at § 5.

D. Past & Current Landscape of Metadata Sharing

1. 2012: OCLC and Harvard's Release of Bibliographic Metadata under CC0

In 2012, Harvard Library released their library metadata records under a CC0 license.¹¹⁷ While it did not impose any legally binding conditions on access to the metadata, the Library requested that users “act in accordance with the following Community Norms of the Harvard Library with respect to the Metadata.”¹¹⁸

Further, Harvard requested a scholarly norm from users; that Harvard Library, OCLC, and the Library of Congress should be given attribution as a source of the metadata, to the extent it is technologically feasible for the users to do so.

For the metadata that Harvard Library had obtained from the OCLC WorldCat database, Harvard requested that users respect and act in accordance with the community norms set forth in the *WCRR*. Harvard Library noted that use of metadata from the WorldCat database for study and research is consistent with those norms, but users who planned to use such metadata for other purposes, whether they were an OCLC member, Harvard Library asked that the individual users review and comply with those norms.

OCLC stated clearly that Harvard's CC0 release was a “well-intentioned and executed compromise.”¹¹⁹ In a post on OCLC's official blog, “Hanging Together,” Jim Michalko, Vice President of OCLC at the time, stated that, while he didn't think that “public domain dedications for data derived from WorldCat are consistent with the OCLC cooperative's norms as expressed in the *WCRR* statement[,]” he “recognize[d] that the *WCRR* statement is *not a legally binding document* and that interpretations of these community norms within the cooperative may differ.”¹²⁰ (emphasis added).

Releasing data, the blog states, is ultimately the choice of the OCLC member institution as are the terms. “The mandates of institutional mission, the imperatives of emerging local policy, national and supra-national structures may all contribute to a differing view and legitimately demand precedence. In our discussions with Harvard [Library] we acknowledged that their direction was their choice. Their mandates took precedence.”¹²¹

2. 2022: *OCLC v. Clarivate*

A decade after Harvard's CC0 release, in June 2022, OCLC filed a complaint against Clarivate, which it defined in its filing as “a multi-billion dollar global information,

¹¹⁷ *Library APIS & Datasets: Policies and Terms of Use – Harvard Library Policy on Open Metadata*, HARVARD UNIVERSITY, <https://library.harvard.edu/services-tools/harvard-library-apis-datasets#showMoreText17807> [https://perma.cc/Z8G7-XBM4] [hereinafter *Harvard Library Open Metadata Policy*] (last visited July 16, 2025).

¹¹⁸ *Id.*

¹¹⁹ Jim Michalko, *Harvard Bibliographic Data Released with Prominent Nod to OCLC*, HANGING TOGETHER: THE OCLC RESEARCH BLOG (Apr. 24, 2012), <https://hangingtogether.org/harvard-bibliographic-data-released-with-prominent-nod-to-oclc/> [https://perma.cc/KU4Y-SHMX].

¹²⁰ *Id.*

¹²¹ *Id.*

analytics, and workflow solutions company that ... focuses on serving the Academic & Government, Life Sciences & Healthcare, Professional Services, and Consumer Goods, Manufacturing & Technology end-markets[.]” in the Federal District Court for the Southern District of Ohio.¹²² The lawsuit was intended to end Clarivate’s MetaDoor project,¹²³ an open platform for sharing cataloging. OCLC was formally seeking injunctive relief and damages against Clarivate.

To accomplish this, OCLC did not sue on a theory of copyright infringement. Instead, they sued in tort: One claim for tortious interference with a contract, and the other claim for tortious interference with business relationships. A “tort” is an infringement of a legal right, under which several remedies are available, including money, damages and court-ordered injunctions. This “tortious interference” with business is a very old law; the idea of interfering with a competitor’s business was the subject of some of the earliest court cases in the history of the common law legal system.

Since the lawsuit was filed in federal court in Ohio, that state’s law for tortious interference with a contract was applicable. To win a verdict under Ohio law, the plaintiff in a tortious interference case must show and prove each of the following factors: 1) the existence of a contract; 2) the wrongdoer’s knowledge of the contract; 3) the wrongdoer’s intentional procurement of the contract’s breach; 4) the lack of justification; and 5) resulting damages.¹²⁴

The elements for OCLC’s separate claim for tortious interference with business relationships is almost identical, except that an additional element must be proven: “intentional interference with prospective contractual relations, not yet reduced to a contract.”¹²⁵

In past cases, these torts have been used to stifle competition. The courts have struggled with the question of when competition crosses the line from “free market norms” into an illicit action that is tortious.¹²⁶ Based on the complaint, OCLC thought this line for competition was crossed.

¹²² Complaint for Temporary Restraining Order, Injunctive Relief, and Damages, at 2, OCLC, Inc. v. Clarivate PLC *OCLC, Inc. v. Clarivate, PLC*, Case No. 2:22-cv-2470 (S.D. Ohio June 13, 2022), available at

<https://www.courtlistener.com/docket/63381226/1/oclc-online-computer-library-center-inc-v-clarivate-plc/> [https://perma.cc/4U99-TQZL] (hereinafter *OCLC v. Clarivate* Complaint).

¹²³ Marshall Breeding, *MetaDoor: A New Bibliographic Service for Libraries to be Offered by Ex Libris*, LIB. TECH. NEWSLETTER (June 2022), <https://librarytechnology.org/document/27423> [https://perma.cc/L5S9-D59K].

¹²⁴ *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 707 N.E.2d 853, 858 (Ohio 1999).

¹²⁵ *Ginn v. Stonecreek Dental Care*, 2015-Ohio-1600, 30 N.E.3d 1034, at 12 (Ohio Ct. App. 2015) (internal citations omitted).

¹²⁶ Kyle K. Courtney, Comment, *Let the Metadata Wars Begin* (June 29, 2022, 2:55 PM), <https://scholarlykitchen.sspnet.org/2022/06/22/oclc-sues-clarivate-over-the-new-metadoor-platform/> [https://perma.cc/WB77-BHE6]. See also Jamie Maggard, Chris Tillery, & Fritz Riesmeyer, *What Constitutes “Wrongful Conduct” in Interference with Contractual or Economic Relations?*, AM. BAR ASSOC.: BUS. TORTS & UNFAIR COMPETITION PRAC. POINTS (May 6, 2019), <https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2019/wrongful-conduct-interference-contractual-economic-relations/> [https://perma.cc/A8H2-TD4A].

If the case went to trial, OCLC was going to have to prove the hardest part first: that Clarivate intentionally caused the breach of the contract. A claim for tortious interference with a contract requires the plaintiff to prove, as an element, an actual breach of contract. However, in the complaint OCLC asserted:

On May 5, 2022, OCLC learned that the Defendants [Clarivate] had contacted the Executive Director of the Boston Library Consortium (“BLC”), to ask if they would be an early adopter of MetaDoor. Defendants also highlighted that Brandeis University, a BLC member and OCLC subscriber, had agreed to be an early adopter. [Executive Director of the Boston Library Consortium] was also told by the Defendants that they could load all of their records into MetaDoor and they would not need any other service going forward.¹²⁷

Whether this engagement would rise to the level that Clarivate intentionally procured the breach of the contract OCLC has with libraries, would have been determined by the court. But it should give libraries pause – since there is an underlying necessary element here that a library *did* breach its OCLC contract.

3. OCLC v. Clarivate: Temporary Restraining Order and Settlement

A few weeks after filing, June 27, a judge in the District Court ruled in favor of OCLC's request for a Temporary Restraining Order (TRO) against Clarivate.¹²⁸ A TRO preserves the status quo until a litigant's application for a preliminary or permanent injunction can be heard.

This TRO effectively stopped Clarivate from working on the MetaDoor project with library partners, as it barred Clarivate and its subsidiaries from:

1. contacting or communicating with OCLC WorldCat customers about:
 - a. downloading, uploading, linking to, transferring and/or otherwise sharing WorldCat records or metadata for MetaDoor, **regardless of the OCLC WorldCat customer's integrated library service or library service platform;**
 - b. partnering or assisting Defendants with developing MetaDoor to **the extent these arrangements induce WorldCat customers to download, upload, link to, transfer, and/or otherwise share records or metadata for MetaDoor,** as set forth above;

¹²⁷ *OCLC v. Clarivate* Complaint, *supra* note 122,. Since this complaint was first filed, Charlie Barlow, the Executive Director at BLC, has consistently disputed OCLC's claim that Clarivate informed him that BLC could load all of their records into MetaDoor and would no longer need any other service. He states: “While I invited Clarivate to an informational session about MetaDoor's early adopter program with BLC's member institutions, BLC always held that MetaDoor's purpose was solely to act as a broker for peer-to-peer (library-to-library) sharing of metadata created and owned by libraries. My perception is that Clarivate held this view too. In fact, most bibliographic metadata across BLC's network originates from sources that actively encourage sharing.” Email from author, (Nov. 14, 2024) (on file with author).

¹²⁸ Temporary Restraining Order at PIN CITE, *OCLC, Inc. v. Clarivate PLC*, Case No. 2:22-cv-2470 (S.D. Ohio June 27, 2022), *available at* <https://www.courtlistener.com/docket/63381226/30/oclc-online-computer-library-center-inc-v-clarivate-plc/> [<https://perma.cc/L7WN-T5ZA>](emphasis added in bold).

2. requesting from OCLC WorldCat customers any OCLC WorldCat records and metadata or records and metadata derived from the same for the use of MetaDoor; and
3. **retaining, using, or making available to the public any OCLC WorldCat records and metadata or records and metadata derived from the use of MetaDoor which was obtained from OCLC WorldCat customers.**¹²⁹

Interestingly, the court found that the OCLC Policy that dictated how OCLC customers can use WorldCat data expressly permits subscribers to extract WorldCat data to enrich their own catalogs, and the subscribers are permitted to “[t]ransfer or make available such data to individual scholars . . . to library consortia . . . , or other libraries and educational, cultural or scholarly institutions (e.g., museums, archives, historical societies, research institutes), whether these institutions are members or non-members of OCLC, for these organizations’ institutional or collaborative re-use.”¹³⁰ However, according to the court, this authorization is limited.¹³¹

The limitation in the OCLC Policy was recognized in the language of the same *WorldCat Rights and Responsibilities (WCRR) Policy*. It states that subscribers should “not engage in other activities that **diminish the value** of WorldCat to the OCLC cooperative.”¹³²

The court found that MetaDoor’s facilitation of a transfer of records between OCLC institutions was diminishing the value since this type of sharing “transcends that permission.”¹³³ So, providing WorldCat records and metadata (the things that make WorldCat valuable) through a competitor’s program that ultimately makes the records and metadata freely available to the general public “diminish[es] the value of WorldCat.”¹³⁴ The case eventually settled, and did not go to trial.¹³⁵

4. Analysis of *OCLC v. Clarivate* and Contractual Breach

The *OCLC v. Clarivate* case is an interesting decision for library stakeholders for several reasons. First, it puts an air of risk over projects that might use records and metadata in collaborative work – for any library partnerships that might have OCLC records or use their Vendor Branded Record (VBR) Licenses service.¹³⁶ Second, the complaint alleges that providing WorldCat records and metadata (“the things that make WorldCat valuable”) that would “make[] the records and metadata freely available to the general public” might be actions in violation of the OCLC WCRR and libraries’ OCLC contracts.

¹²⁹ *Id.* at 8 (emphasis added).

¹³⁰ *Id.* at 6.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Joint Stipulation of Dismissal with Prejudice and Agreed Termination of TRO, *OCLC, Inc. v. Clarivate, PLC*, Case No. 2:22-cv-2470 (S.D. Ohio Nov. 7, 2022), available at <https://www.courtlistener.com/docket/63381226/52/oclc-online-computer-library-center-inc-v-clarivate-plc/> [https://perma.cc/H757-Q5KD].

¹³⁶ See *supra* More specifics on OCLC’s VBR licenses can be found *infra* at note 99.

The claims, particularly tortious interference with a contract, imply that there has been some sort of breach of a contract. In this case, a third party (Clarivate) was accused of inducing an entity (a library) to breach their contract with another entity (OCLC). This means that the actual party that has breached the contract, according to OCLC, are the libraries. In bringing this type of tort, OCLC is inferring that libraries who enter into this kind of arrangement with Clarivate have breached their OCLC contracts.

With that said, OCLC did not sue a library for breach of contract, most likely because it's bad business to sue the paying customer – both for legal and PR reasons. However, another potential reason that OCLC did not pursue legal action against the libraries could be that they did not think there were sufficient grounds to be successful.

While OCLC is not suing libraries for breach of their contracts, it creates a question: Will OCLC begin suing libraries? Probably not right now. But it is clear that OCLC's leadership believes there has been a breach of their contract with libraries, and that their policies are actually enforceable, a point which is merely arguable at this point, rather than certain.¹³⁷

5. 2023: OCLC and UF

2023 has seen OCLC renew its efforts to impose restrictions on the opening of catalog records. The George A. Smathers Libraries at the University of Florida, which began including CC0 statements in original cataloging records in 2011 after receiving assurance from OCLC that this would be consistent with the *WCRR*, was recently advised that OCLC now opposes this practice.¹³⁸

In February 2023, OCLC communicated to the University of Florida Libraries that “the inclusion of a CC0 statement in a WorldCat enhanced record implies unrestricted use of the record which is not aligned with WorldCat Rights and Responsibilities,” and that OCLC would remove CC0 statements from records created by the University of Florida Libraries.¹³⁹ In addition to asserting the incompatibility of CC0 statements with the *WCRR*, OCLC further suggested a potential breach of contract, stating that the

¹³⁷ Note that OCLC is no stranger to litigation with competitors. In 2010, SkyRiver and Innovative Interfaces sued OCLC, claiming that OCLC held an unlawful monopoly of cataloging services, bibliographic data services, interlibrary lending, and was attempting to monopolize integrated library systems. The lawsuit was later dropped. See *SkyRiver Technology Solutions, LLC v. OCLC Online Computer Library Center, Inc.*, Case No. 3:10-cv-03305 (N.D. Cal. July 28, 2010), available at

<https://www.courtlistener.com/docket/4177400/skyriver-technology-solutions-llc-v-oclc-online-computer-library-center/>, and *SkyRiver Technology Solutions, LLC v. OCLC Online Computer Library Center, Inc.*, Case No. 2:10-cv-01017 (S.D. Ohio Nov. 10, 2010), available at <https://www.courtlistener.com/docket/4363096/skyriver-technology-solutions-llc-v-oclc-online-computer-library-center/>.

¹³⁸ *Resource Description Services: Creative Commons CC0 Catalog Records*, UNIV. OF FLA.

GEORGE A. SMATHERS LIBRARIES,

<https://catds.uflib.ufl.edu/resources/creative-commons-cc0-catalog-records/>

[<https://perma.cc/SKLC-JYRE>] [hereinafter *UF CC0 Catalog Records*] (last visited July 16, 2025).

¹³⁹ *Id.*

application of such statements to WorldCat enhanced records “is not permitted in [University of Florida’s] contractual agreements with OCLC.”¹⁴⁰

The University of Florida Libraries responded by publicly posting information about OCLC’s communications and noting that OCLC’s removal of CC0 statements from University of Florida catalog records should not affect retention of CC0 statements in any copies of those records available elsewhere. However, it explained that the University of Florida Libraries will no longer insert CC0 statements in any records created using OCLC platforms and services.¹⁴¹

6. 2025: *OCLC v. Baker & Taylor*

In March, 2025, OCLC filed another lawsuit, this time against library services vendor Baker & Taylor, LLC.¹⁴² The suit alleges four core allegations: breach of direct contract; tortious interference with contractual relationships; tortious interference with prospective business relationships; and unjust enrichment.

With the exception of the breach of contract claim (which came from Baker & Taylor’s excessive extraction of records beyond their contractual allotment), the case is a near match for *Clarivate*. As Baker & Taylor’s short-term license to WorldCat (under which OCLC alleges they exceeded the level of allowable extraction, triggering breach) was slowly unwound and cancelled, OCLC alleges that Baker & Taylor began including clauses in contracts with library customers across products, granting them license to their catalog records, and, as alleged in the complaint, triggering the tortious interference with contractual relationships. The text of the offending clause was:

By signing this Agreement, you are authorizing Baker & Taylor to utilize your cataloging records and are confirming that you have the right to make this authorization. This authorization means that your cataloging records are licensed to Baker & Taylor on a perpetual, fully paid-up, nonexclusive, non-transferable, and irrevocable, basis for use in BT CAT and in any and all other products offered at any time by Baker & Taylor to its customers.¹⁴³

Unlike in *Clarivate*, OCLC alleges that use of this “backdoor” to access records was more intentional by Baker & Taylor, as they would have had knowledge of the library’s contractual obligations, via the *WCRR*, to OCLC. Further, given the attention the *Clarivate* case received, it would be unlikely that this was undiscussed at Baker & Taylor, although the complaint does not mention this.

Underpinning the claim of tortious interference with prospective business relationships, Baker & Taylor’s efforts seem to have been working: Customers began to switch products based, at least partially, on price incentives while using mostly data

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Complaint for Injunctive Relief and Damages, *Baker & Taylor, LLC*, Case No. 2:25-cv-00309 (S.D. Ohio March 26, 2025), available at <https://www.courtlistener.com/docket/69797779/1/oclc-inc-v-baker-taylor-llc/>.

¹⁴³ *Id.* at 15 (emphasis omitted).

potentially subject to the *WCRR* as the product.¹⁴⁴ The Baker & Taylor case is ongoing, and is one to watch in this space.

E. Existing Open Metadata Policies

Institution	License Applied	Additional License	Attribution Requested	Additional Attribution
Columbia ¹⁴⁵	CC0	N/A	Columbia University Libraries	N/A
Europeana ¹⁴⁶	CC0	N/A	“Give attribution to the data provider and all contributing data aggregators, including Europeana. Aggregators perform a crucial task in collecting, storing and harmonizing data so that it is more widely accessible and interoperable.”	“Be aware of any additional applicable community norms of data providers and data aggregators.”

¹⁴⁴ Id. at 16.

¹⁴⁵ *Behind the Scenes: CLIO Open Data*, EUROPEANA, USAGE GUIDES FOR METADATA, <https://library.columbia.edu/bts/clio-data.html> [<https://perma.cc/A5D8-XGNG>] (last visited July 16, 2025DATE).

¹⁴⁶ EUROPEANA, USAGE GUIDES FOR METADATA, <https://www.europeana.eu/en/rights/usage-guidelines-for-metadata> [<https://perma.cc/2CYZ-V7HJ>] (last visited July 16, 2025).

Institution	License Applied	Additional License	Attribution Requested	Additional Attribution
Harvard ¹⁴⁷	CC0	N/A	Asks for attribution to Harvard Library and OCLC and the Library of Congress to the extent it is technologically feasible to do so. For metadata consisting of or contained in records Harvard has obtained from the OCLC WorldCat database, users must respect and act in accordance with the community norms set forth in the WorldCat Rights and Responsibilities for OCLC Cooperative.	OCLC, Library of Congress
MIT	CC0	“Metadata originating from OCLC is subject to the WorldCat Rights and Responsibilities statement”	MIT Libraries	OCLC, Library of Congress
NYPL ¹⁴⁸	CC0	N/A	NYPL	OCLC, Library of Congress
NYU ¹⁴⁹	CC0	ODC-BY	N/A	OCLC
Princeton ¹⁵⁰	CC0	N/A	Princeton University Library	N/A

¹⁴⁷ *Harvard Library Open Metadata Policy*, *supra* note 117; Jim Waldo, *Harvard Library Bibliographic Dataset V1*, HARVARD DATAVERSE (2015), <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/LZDQYN> [https://perma.cc/AQ5R-L8F7].

¹⁴⁸ *NYPL Policy on Open Bibliographic Metadata*, NEW YORK PUB. LIBRARY, (Mar. 2013), <https://www.nypl.org/help/about-nypl/legal-notices/open-metadata> [https://perma.cc/9QYE-T6C4] (Mar. 2013).

¹⁴⁹ *Open Metadata Policy*, NEW YORK UNIV. LIBRARIES, <https://library.nyu.edu/about/policies/open-metadata-policy/> [https://perma.cc/24MU-TE9M] (last modified 2023).

¹⁵⁰ PUL Open Dataset, Princeton University Library, <https://catalog.princeton.edu/dataset>

Institution	License Applied	Additional License	Attribution Requested	Additional Attribution
UC Libraries ¹⁵¹	CC0	N/A	Optional to unit	N/A
University of Florida ¹⁵²	CC0	OCLC sourced content is excluded from CC0 Declaration	N/A	N/A
University of Minnesota ¹⁵³	CC0	N/A	University of Minnesota Libraries	N/A
University of Pennsylvania ¹⁵⁴	CC0	ODC-BY	N/A	OCLC
University of Washington ¹⁵⁵	CC-BY	N/A	N/A	See text
Yale ¹⁵⁶	CC0	ODC-BY	N/A	OCLC

As part of our research, we assembled a list of existing policies. While some were known to the authors, or discovered through peer outreach, others were reported in the results of a survey sent to several listservs and forums requesting information about institutional metadata policies. From the survey, two policies were explicitly for repositories, which is outside the scope of this report. Two other institutions reported that while they'd considered open metadata policies, they had not implemented anything formally.

Of the resulting list of 13 policies, all but one make the records authored by the institution available using the CC0 1.0 Public Domain Dedication¹⁵⁷ with requested attribution to the institution (excluding Harvard, no attribution is requested). The Penn and Yale policies both specifically call out that records derived from OCLC Worldcat are made available under the ODC-BY license with attribution to OCLC, per OCLC's policy.

¹⁵¹ *UC Libraries Metadata Sharing Policy*, UNI. OF CALIFORNIA LIBRARIES, (June 11, 2015), <https://libraries.universityofcalifornia.edu/sag2/uc-libraries-metadata-sharing-policy/> [<https://perma.cc/H88K-FA9G>] (June 11, 2015).

¹⁵² *UF CC0 Catalog Records*, *supra* note 138.

¹⁵³ *University Libraries Open Sharing Policy*, UNIV. OF MINNESOTA (Mar. 14, 2016), <https://drive.google.com/file/d/0B01AHtagDHqxV2VGbEhsc2E1LUk/view?resourcekey=0-SaJ-C5q-yrP9OHnAF447Pg> [<https://perma.cc/2DML-Q3A8>].

¹⁵⁴ *Penn Libraries Open Metadata Policy*, UNIV. OF PENNSYLVANIA LIBRARIES, <https://www.library.upenn.edu/about/policies/metadata> [<https://perma.cc/QQQ6-3WZR>] [hereinafter *Penn Metadata Policy*] (last visited July 16, 2025).

¹⁵⁵ *UW Libraries Open Metadata Guidelines*, UNIV. OF WASHINGTON LIBRARIES, <https://www.lib.washington.edu/cams/open-metadata> (last visited July 16, 2025).

¹⁵⁶ *Open Metadata Service: Home*, YALE UNIVERSITY LIBRARY, <https://guides.library.yale.edu/c.php?g=923429> [<https://perma.cc/59XC-4CLG>] (last visited July 16, 2025).

¹⁵⁷ *CC0 1.0 Universal (CC0 1.0) Public Domain Dedication*, *supra* note 54.

University of Washington stands out from this group as the only institution providing their data under a CC-BY license.¹⁵⁸ Their policy does not provide explicit instruction for attribution to OCLC, but does state that, “Any use of the Libraries’ metadata must conform to all applicable laws and regulations in a given jurisdiction and applicable contractual restrictions, including the WorldCat Rights and Responsibilities.”¹⁵⁹

Of specific interest is the policy posted by NYPL. Their metadata does not include rights statements within individual records, nor any identifying information that could be used to track which records originated from which source. While the entirety of their metadata is made available as CC0, they make a series of requests as part of their “community norms” for downstream users to consider: Attribution to NYPL, OCLC, and the Library of Congress, as well as consideration of OCLC member Rights & Responsibilities, are chief among them.¹⁶⁰ NYPL composed this policy in order to comply with the requirements DPLA¹⁶¹ set out for partners that all metadata provided to DPLA receive a CC0 Public Domain Dedication.

It should be noted that of the listed institutions who are sharing their records, only Penn has divided downloadable datasets between, “Catalog records created by Penn Libraries” and “Catalog records derived from other sources (e.g., OCLC).”¹⁶²

IV. RISK: COPYRIGHT VS. CONTRACT

Remedies for breach of contract are typically much less severe than the toughest copyright penalties. Licenses present a mix of copyright and contract issues, and violating a license can trigger liability for copyright infringement, however failing to abide by a license is not copyright infringement unless your use specifically requires a license. In other words, if your use is a fair use, or the content is not copyrightable, then breaching a contract is only a breach of contract, and nothing more.

The most likely negative outcome for breach of a library contract is one the licensor can impose unilaterally on your institution: shutting off access to the works or resource. Licensors don’t have to go to a court to enforce the terms privately by terminating access in this way. If a licensee institution disagrees with the vendor, they could threaten to sue the vendor to get access restored, but that is an expensive proposition. The more likely outcome in this situation is that the licensee institution will have to negotiate with the vendor to have access restored.

Institutions bound by OCLC’s Agreement or other third-party agreements are bound by the terms of those agreements, which include those defined in the *WCRR*. In these cases, the practical result of a license breach is uncertain. While the University of Florida was reprimanded for inserting rights statements into records, a broader statement with acknowledgement, such as those used by Europeana and the NYPL, should be, and has

¹⁵⁸ *Id.* (“The UW Libraries makes openly available the following metadata it has created under the following licenses: Bibliographic metadata from the Libraries’ catalog under a CC-BY license[.]”)

¹⁵⁹ *Id.*

¹⁶⁰ *NYPL Policy on Open Bibliographic Metadata*, *supra* note 148.

¹⁶¹ *DPLA Metadata Application Profile (MAP)*, DIG. PUB. LIBRARY OF AM, <https://pro.dp.la/hubs/metadata-application-profile>

[<https://perma.cc/XK6N-S34Z><https://perma.cc/XK6N-S34Z>] (last visited July 16, 2025).

¹⁶² *Penn Metadata Policy*, *supra* note 153.

apparently been, sufficient to meet compliance requirements. Records from vendors with more explicit restrictions should be excluded from open datasets until such time that more favorable terms can be negotiated.

How can you lower the likelihood of something going wrong, and how can you lower the stakes and reduce the impact in case something does go wrong with an institution's use of metadata?

One thing to consider is reaching out to the copyright holder/licensor and getting additional or more specific permissions. Experiences diverge wildly, but vendors are increasingly familiar with metadata uses and may well be amenable to negotiating specific terms to permit it, even if their standard contract does not.

Finally, be available and responsive when folks have concerns. If you share your metadata, include a way that the recipients can get in touch with you. If someone contacts you to discuss this issue, do not ignore them. Do what you can to make it easy to channel any objections or concerns quickly and easily into a low-impact resolution.

CONCLUSION: INVITATION TO ENGAGE

In light of the analysis conducted, the authors of this report recommend that both locally and collectively, we must encourage the open sharing of member institutions' library-created metadata through development of aligned policies, and supporting these policies through vendor negotiation practices, including requests to contractually acknowledge library metadata ownership. OCLC and other community-based providers of metadata are encouraged to permit broad sharing of metadata, and clarify policies and contract language that may interfere with the open distribution of metadata.

A. Consortial & Community Open Metadata Policies

Metadata is not subject to copyright in the United States. However, sharing all metadata under an open license both grants reuse permission in cases where some added metadata elements may satisfy the "spark of creativity" necessary for copyrightability and clarifies the open status of non-copyrightable metadata elements.

Consortia and other communities collaborating on metadata and library policy should adopt a policy that expresses a commitment to openly sharing metadata and directs that, to the extent metadata contains any copyrightable expression, it be made available under a CC0 Public Domain Dedication that waives any applicable rights:

Community Open Metadata Policy

In alignment with its established commitment to provide open, non-discriminatory access to the world’s knowledge, and in order to support research, aid in the dissemination of information, and promote innovation, [Consortia/Community] commits to sharing metadata openly with the world.

[Consortia/Community] asserts that the vast majority of bibliographic metadata is not copyrightable. Insofar as the records contain copyrightable material, they should be released under a CC0 Public Domain Dedication to ensure the widest possible distribution, thereby further supporting research, aiding in the dissemination of knowledge, and promoting innovation.

[Consortia/Community] members aligned with this policy will, subject to legal restrictions, provide open access to their bibliographic metadata. More specifically, community members will share library-created metadata under a [CC0](#) Public Domain Dedication. Where appropriate, acknowledgement of sources and contributing parties should comply with scholarly norms.

Each [Consortia/Community] member will be responsible for interpreting this policy within their institution, resolving disputes concerning its interpretation and application, and modifying it to the extent necessary for local implementation.

B. Develop Local Policies that Align with the Model Policy on Open Metadata & Community Open Metadata Policy

Members of consortia and communities who adopt the *Community Policy on Open Metadata* should confirm that their policies are in alignment with the *Community Policy on Open Metadata*.

Libraries that do not currently have policies to openly share metadata should develop such policies based on the *Model Policy on Open Metadata*, identifying appropriate exclusions from the policy and stating that metadata that can be openly shared will receive a CC0 license.

Model Policy on Open Metadata

In alignment with its established commitment to provide open, non-discriminatory access to the world's knowledge, and in order to support research, aid in the dissemination of information, and promote innovation, [institution] commits to sharing metadata openly with the world.

[Institution] asserts that the vast majority of bibliographic metadata is not copyrightable. Insofar as the records contain materials copyrightable by [institution], they are hereby released under a CC0 Public Domain Dedication to ensure the widest possible distribution, thereby further supporting research, aiding in the dissemination of knowledge, and promoting innovation.

Bibliographic metadata shall be openly available. More specifically, [institution] will share library-created metadata under a [CC0](#) Public Domain Dedication. Where appropriate, acknowledgement of sources and contributing parties should comply with scholarly norms and legal restrictions.

C. Ask Vendors to Contractually Acknowledge Metadata Ownership

In order to avoid uncertainty in metadata sharing, libraries should request that vendors contractually acknowledge libraries' metadata ownership by asking vendors to insert clauses to this effect, such as the following sample clause in contracts:

Model Contract Language Affirming Open Metadata

(Vendor) guarantees that catalog records delivered to the Library under this agreement do not infringe any rights under copyright nor violate any property rights. Insofar as any copyright in the created records exists, it is assigned and transferred to the Library. The Library, on receipt of the records, will release them under a CC0 1.0 Universal (CC0 1.0) Public Domain Dedication

If the delivered records include or are derived from copyrighted material, (Vendor) guarantees that necessary permissions have been secured, will explicitly identify sources, and provide any required attribution.