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Standards Column — Ready to Work Without a License? NISO's Shared E-Resource Understanding (SERU) Working Group



by **Todd Carpenter** (Managing Director, NISO) <tcarpenter@niso.org>

Few things can excite the passions of librarians and publishers in quite the same way that licensing can. It wouldn't be surprising if the amount of time invested on both sides of information exchange developing, negotiating, reviewing, and maintaining licenses were to run into the hundreds of thousands of hours. And, of course, there is a very significant cost to addressing those issues. In some cases, the salary costs of negotiating the license can far outstrip the costs of acquiring the resource itself. Who among us hasn't asked: "Can't we find a better way forward?"

As a community, we have tried to answer that question through various approaches to streamlining negotiations, including by the distribution of model licenses and the development by some libraries of their own standard license. While these licenses have provided a useful starting point for negotiations and have helped clarify the interests and concerns of the publishing and library communities, there remains a strong sense that significant problems with the practice of bilateral license negotiation persist.

Over the past two decades, we have collectively come to some consensus on the general terms that should be included in licenses. Common understandings have developed relating to users, access control, usage tracking, and responses to unauthorized use or abuse. Much of the haggling, hand wringing, and legal bargaining takes place outside of these core issues. The basics of a transaction are rarely at issue in most licenses: a library wants to subscribe to an electronic product that is stable, usable, traceable, and will be available to patrons in the long term, while the publisher wants to provide access to materials that will be available to a limited community for a defined period of time, in respect of copyright law and receive payment for that service.

In October 2006, a one-day meeting jointly sponsored by the **Association of Research Libraries (ARL)**, the **Association of Learned and Professional Society Publishers (ALPSP)**, the **Society of Scholarly Publishing (SSP)**, and the **Scholarly Publishing and Academic Resources Coalition (SPARC)** brought together stakeholders in the licensing of electronic resources to discuss what common ground they could find in their experience with license negotiation. Exploring mutual frustrations with the practice of negotiating licenses bilaterally, customer-by-customer, in order to provide library access to publishers' electronic resources, librarians and publishers alike began to question whether a new model may be necessary — and together agreed that more could be done. Together they set a goal of developing a set of recommended practices based on shared understandings of library and publisher expectations — in essence, the creation of a "non-license."

Meeting participants further determined that **NISO** would be the best possible incubator for this goal. As a neutral member organization representing interests from all participants in this process, **NISO** offers the ability to bridge across publisher, library, and vendor communities, infrastructure and support for such initiatives, and a broad reach to help ensure the viability and adoption of the recommended practices.

Complementing the work of **NISO's License Expression** and **ONIX-PL** groups, as well as **NISO's** new approach to focus on solutions to community problems, the **Shared E-Resource Understanding (SERU) Working Group** was therefore formed. **SERU** will focus on developing recommended practices to support the sale of e-resources without formal licenses, instead relying on a common set of shared understandings if they feel their perception of risk has been adequately addressed by current law and developing norms of behavior. Specific terms of sale, such as unique user access and price, can still be handled by a purchase negotiation.

Finding a middle ground where publisher and library perspectives meet will be needed to develop a useful set of practice descriptions. In order to do that, it is essential for **NISO** and the working group to engage a broad community — with vendors, publishers, and libraries all playing an active role in providing input and feedback on the **SERU** work. Certainly, with the variety of electronic products available, no one solution is going to fit every need. **SERU** will not create another draft license, nor a new set of standard terms that licenses should include. Further, **SERU** isn't envisioned as a solution that would replace all licenses—there are situations where it is appropriate and even necessary to have a detailed license in place. However, in cases where the costs of license development and negotiation seem disproportionate to the risks for each party, **SERU** can provide a less cumbersome alternative. The goal will be to have a referential set of policies that describe shared publisher and library expectations as well as approaches to resolving problems that may arise. Organizations will publicly register their assent to the **Understanding** and their willingness to abide by its statements as documented on the **SERU** Website.

A draft version of the **Recommended Practices** was posted on the **SERU** Website in early March. Now that it is available, we encourage the community to explore the project, review the draft understandings and provide comments and suggestions to the working group. After feedback has been received and incorporated, a new version of the shared understandings draft will be posted on the working group site, to be available for publishers and libraries to refer-

ence approximately late May 2007. Where the **SERU** approach suits business needs both publishers' and libraries', **NISO** will support pilot use of **SERU** through 2007. Wide participation in this pilot testing will be key to discovering any unforeseen issues that may arise prior to full implementation. Although anyone will be able to reference and apply the recommended practices, we encourage you to contact the **SERU** co-chairs if you are interested in being part of the pilot process. An ad hoc registry of publishers/vendors and libraries participating in the pilot period will be available on the working group site shortly to allow interested publishers and libraries to publicize their support and to assist in gathering feedback on the draft from the pilot test.

After testing and comment, any necessary changes suggested by the community will be made. A final draft of the understanding will be posted in early 2008 and, following a **NISO** membership vote, hopefully, broadly adopted. **NISO** will also establish an ongoing registry for publishers and libraries to use to communicate that they adhere to the principles outlined in the common understandings statement and conform to the expectations they express. In this way, public participation in **SERU** will be recognized and promoted. The working group will also plan for an ongoing review and maintenance group that will be coordinated by **NISO** to adjust the understanding as needed or suggested by the community. Revision to the common understandings will be conducted in an open and participatory manner, consistent with **NISO** practices.

The **SERU** working group is co-chaired by **Judy Luther** at **Informed Strategies** and **Karla Hahn** at the **Association of Research Libraries**. To help distribute materials, update interested parties, and engage discussion, an open electronic mailing list, **SERUinfo**, has been created. Similarly, outreach and public discussion at the many publisher and library meetings and conferences throughout the year will provide the community an opportunity to learn about the initiative and engage in its development. A complete list of working group members, further information about this initiative (including FAQs and resources), and information on how to join the electronic discussion list is available from the **Working Group's** Webpage: www.niso.org/committees/seru/.

While not the answer to everyone's issues facing negotiating agreements between content providers and purchasers, hopefully **SERU** will lessen the burden in some cases. Step by step, we may yet reach a point where in many cases purchasing an electronic product will be as simple as ordering a book or journal used to be. 🍌