

JISC PALS2 PROJECT:

ONIX FOR LICENSING TERMS PHASE 2 (OLT2)

Publisher requirements for the creation of ONIX-PL licence expressions

1. Introduction

As part of the OLT2 Project, telephone and email discussions were held with five publishers, representing different scales of operation:

Cambridge University Press (Kevin Taylor, Press Intellectual Property Director)

Oxford University Press (Fiona Bennett, Head, Rights and New Business Development)

Rockefeller University Press, New York (Greg Malar, Circulation Director, and Bruce Lyons, Marketing and Sales Director)

Royal Society of Chemistry (Dr Mike Hannant, Publishing Services Manager)

Royal Society of Medicine (Kirsty Luff, Journals Circulation and Licensing Manager)

We would like to record our thanks to these organisations and individuals for their contributions to the project.

2. Methodology

2.1 Review of participants' standard licence terms

As a first step, each participant was asked to provide copies of, or web access to, a selection of its standard licensing terms. The purpose of this was partly to ensure that the telephone interviews were appropriate to the practices of each participant, and partly to add to the repository of information about publishers' licences available to support the further development of the ONIX-PL standard. However, the primary aim of these discussions was not related to the content of the individual licences, but rather to the processes by which they were developed, maintained, negotiated and administered by the publisher.

2.2 Informal questionnaire

Following a review of the licences provided in this way, an informal email "questionnaire" was prepared for each participant. Questions were in two parts: first, any queries arising from the participant's standard licensing terms; and second, a broadly similar set of questions for each participant designed to enable us to understand how licenses were administered within their organisation. While each was somewhat tailored to the individual participant, the general pattern of the questions was along these lines:

a. [For those organisations that administered licences for certain classes of user by on-line "click-through" of standard terms and conditions.] Under what circumstances, and with roughly what proportion of your customers, do you require the signature of a separate paper licence?

- b. Do you maintain templates for different types of paper licence? Do you have additional standard clauses that you re-use where applicable?
- c. With what frequency do you vary the terms of your licences because of issues raised by customers? What types of issues typically arise?
- d. Please “walk through” the process that is typically involved in agreeing a new paper licence (ignoring fee negotiations). Who handles this process?
- e. How does the process differ (if at all) when a subscription agent is involved?
- f. What process would you go through if you found it necessary to introduce revised terms across all or a substantial number of existing customers?

The “questionnaire” ended with a very brief outline of the way in which we imagined that the participant would need to proceed in order to create, maintain and deliver ONIX-PL expressions of its licences through a hypothetical editing tool, as a basis for discussion of the processes likely to be involved.

2.3 Telephone interview

Finally, a telephone interview was conducted with each participant to talk through the points from the email “questionnaire”. At the same time, each participant was invited to add any other comments on the aims and direction of the ONIX-PL development.

3. Issues arising from review of participants’ licences

The general conclusion from the review of participants’ licences was that they did not present any serious problems with regard to an ONIX-PL expression. There were a few concepts that had not so far been foreseen and that would need to be added to the vocabulary of the standard, but this was only to be expected. Two more general aspects came to light that we had not previously considered:

3.1 Click-through licences

Several participants relied on “click-through” licences for single-site or single-institution subscribers, and only required separate paper licences to be signed with multi-site subscribers, consortia, and other special cases such as pharmaceutical companies. This had a number of implications. There might in fact be no definitive record held by either the licensor or the licensee of the terms that had been formally accepted by click-through (and at least one interviewee suggested that the delivery of an ONIX-PL expression could fill this gap). To represent a click-through licence, it might be necessary to create an ONIX-PL licence expression in which the licensee was not explicitly named, or in which the identity was added automatically as a by-product of the sign-on process. The delivery of the ONIX-PL expression could be automated through this sign-on process. However, with many smaller publishers, online resources were hosted by third parties such as Highwire Press, and the licence, although publisher-controlled, was also on the hosting service website; while subscriber sign-up and authorisation were handled remotely by the publisher without any direct connection to the hosting service. At some stage, there should be discussions with hosting services on the part they might play in the delivery of ONIX-PL expressions.

3.2 Licence terms that must be observed by individual users

In some cases there were separate areas on the publisher’s website that spelt out conditions that must be observed by individuals using the online resources, either under personal subscriptions (which are probably at present outside the scope of ONIX-PL) or as authorised

users within a subscribing institution. These were not always clearly related to the terms of the institutional licence, which also placed obligations on the institution to ensure that its authorised users observed certain conditions. We believe there is a need to clarify within many licences (and certainly within their ONIX-PL expression) the terms that apply to individual authorised users and those that relate to the subscribing institution. Some of the latter may be subject to confidentiality.

4. Issues arising from interviews

4.1 Licence templates and optional clauses

All the participants could be regarded as maintaining a small number of “templates” that they regularly used as a basis for individual licences. The general impression was that the proportion of licences that required variations to the template was small but by no means insignificant – perhaps five to ten percent would be a typical guesstimate, though higher in at least one case. However, it was much less frequent for these variations to affect the core “usage” terms. They were more likely to concern clauses such as applicable law and jurisdiction, or liability and indemnity, reflecting the fact that many subscribing institutions were public bodies subject to local rules on some of these types of contract term.

Participants varied in the extent to which they had tried to maintain an organised set of “optional clauses” that they had used when responding to requests for variation. This was, however, seen as a desirable approach to managing such variations.

4.2 The negotiation process

There was, predictably, no deviation from the obvious pattern for negotiation of a new licence, based almost always on the provision of a draft by licensor to licensee, followed by whatever stages of revision might prove necessary in order to arrive at an agreed text.

Negotiation was invariably directly between publisher and licensee, even when a subscription agent or (in at least one case) an appointed sales agent was involved.

4.3 Responsibility for licence administration

Each of the participants could identify a single individual who carried the overall responsibility for the organisation’s licences. In smaller organisations, this individual would be responsible for all stages of licence administration. In a large publisher with a substantial US presence, however, the administration of licences within the terms of a standard template was routinely delegated to a local sales manager. Variations outside the template would be referred back to the corporate licensing manager for discussion and approval.

Consideration of the responses on this point led us to identify a number of processes – template development, creation of a licence expression within the constraints of an approved template, creation of a licence expression requiring variations on a template, and “signing off” a licence expression – each of which could be subject to a specific user authorisation level in the proposed ONIX-PL editing system. Clearly, in some organisations one individual would hold all of these authorisations. In other, larger, organisations they might be shared in different ways.

4.4 Benefits for the publisher

One very strong message that came across – unsolicited – from several participants was that publishers’ internal systems for keeping records of existing licences were not particularly

well-developed. There would be major benefits if the ONIX-PL editing system was also a record-keeping system for successive versions of licence templates and individual licences.

This was already in our opinion an essential part of such a system, simply in order to facilitate the revision processes that would be required from time to time. As a direct result of these discussions it has become more than a necessary part of the infrastructure to support the ONIX-PL standard: it is now perceived as an additional goal in its own right, and potentially a major benefit to licensors who adopt ONIX-PL.

5. Conclusion

In summary, these consultations with publishers have reinforced our confidence that the ONIX-PL format will support a wide range of different licences, and given some valuable insights into the processes that ONIX-PL editing tools must support. They have significantly influenced several aspects of the functional requirements and design specification which is the main deliverable from the project; and they have brought to light some previously unrecognised benefits for licensor organisations, which should help to motivate them to adopt ONIX-PL – to the ultimate benefit of the library community, and its ability to automate the management of licensed electronic resources.