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TOPIC

LICENSING OF DIGITAL CONTENT

REFLECTIONS ON LIBRARY LICENSING

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FRAMEWORK FOR RIGHTS
MANAGEMENT

ONIX FOR PUBLICATIONS LICENSES

THE SHARED ELECTRONIC RESOURCE
UNDERSTANDING (SERU)

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The Shared Electronic Resource Understanding (SERU): Six Years and Still Going Strong

The Shared Electronic Resource Understanding (SERU) Recommended Practice was first developed in 2008 as a new approach to finalizing agreements between libaries and content providers for the use of electronic resources. The typical process of customer-by-customer, bi-laterally negotiated formal legal contracts was seen by many as overly burdensome, increasing the cost of sales for both libraries and publishers and delaying access for users at subscribing institutions.

There have been a number of efforts to develop model licenses and templates to streamline the licensing process. While such models are being successfully used, even model licenses require additional negotiation and agreements to finalize and customize the license for each subscribing institution. And it has not always been the publisher who is requiring a license; the Organization for Economic Co-operation and Development (OECD) policy, for example, is to use a license only when the subscribing library requires one.

For "big deal" journal bundles involving many products and large sums of money, such license negotiations are inevitable and will likely continue. But scholarly publishing involves many publishers of all sizes, and many electronic resource acquisitions involve only one or a few journals. For such transactions, the costs of the license negotiation could equal or exceed the cost of the content under discussion. Many

publishers and libraries felt that there should be a better way to acquire e-content, without the burden of a formal and complicated license.

A shared framework of understanding and good faith that both parties could accept as an alternative to such licenses was envisioned by Judy Luther (President of Informed Strategies) and Selden Lamoureux (then Electronic Resources Librarian at North Carolina State University Libraries). They approached NISO to sponsor the project and a working group of librarians, publishers, and subscription agents was assembled to develop a statement of shared understanding about providing and using an e-resource. Following development of the draft recommendations, a six-month trial was conducted to gain feedback and identify any needed changes before finalizing the document.

The first edition of *SERU: A Shared Electronic Resource Understanding* (NISO RP-7-2008) was published in February 2008. The Working Group also provided FAQs and implementation assistance. By the end of 2008—only 10 months after publication—27 publishers/content providers, 72 libraries, and 8 consortia had indicated their interest by signing up for the SERU Registry. A survey conducted in January 2011 showed that 45.7% of respondents had used SERU 1-5 times; 7.4% had used it 5-10 times, 2.5% used it 10-15 times, and 3.7% more than 15 times. Some non-using respondents indicated their interest in adopting SERU for future use.

At the 2009 American Libraries Association Conference, Judy Luther and Selden Lamoureux were honored with the Coutts Award for Innovation in Electronic Resources Management for their work in developing SERU. In the award presentation, SERU was noted as "a significant step forward in the electronic resource acquisition process…with the potential for drastically reducing the amount of time and money it takes to bring resources to users."

Expanding the Scope of SERU

The original SERU Recommended Practice was focused on subscription types of acquisitions, such as for e-journals. However, some libraries began adapting SERU for use with back-file purchases and e-books. Recognizing this need, a project was initiated in 2011 by the NISO SERU Standing Committee to revise the Recommended Practice to be more usable for these non-subscription types of e-resources.

In May 2012, the second edition of the SERU Recommended Practice (NISO RP-7-2012) was published. The core tenets of the SERU statements of understanding did not change, but the language was changed to reference "electronic resources" instead of "subscriptions" and "acquiring institutions" instead of "subscribers". Content was added to the sections on *The Acquiring Institution, Use of Materials*, and *Archiving and Perpetual Access* to accommodate a wider variety of e-resources.

The Statements of Understanding

The SERU Recommend Practice contains statements of common understandings for acquiring electronic resources that address the following seven areas. Because SERU is not a license, legal terms (such as jurisdiction, warranties, and liabilities) are not used. Examples of the statements are noted below for each section as illustrations. The complete statements can be

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found in NISO RP-7-2012, which may be freely downloaded from the NISO website.

➲ The Acquisition

The acquiring institution receives the right to use the content of the electronic resource(s) for a specified period through payment of an agreed upon fee….The acquisition of the provider's electronic resource allows an acquiring institution and its authorized users access to the content. The number of concurrent users is not restricted unless otherwise explicitly agreed upon by the provider and the acquiring institution.

➲ The Acquiring Institution and Its Authorized Users

The authorized user population will be defined in institutionally appropriate ways that respect the business interests of the provider. The provider will rely upon the acquiring institution's judgment in defining its user community, but may challenge any interpretation that it considers damaging to its interests.

➲ Use of Materials

Use of the content is generally governed by applicable copyright law…Some of the accepted uses include interlibrary loan and ad hoc sharing of single articles and chapters by individuals for purposes of scholarship or private study.

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Inappropriate Use
Both providers and acquiring institutions will make reasonable efforts to prevent the misuse of the content and limit access to authorized users, and will not knowingly allow unauthorized users to gain access.

Confidentiality and Privacy
The acquiring institution and the provider respect the privacy of the users of the content and will not disclose or distribute personal information about the user to any third party without the user's consent unless required to do so by law.

Online Performance and Service Provision
Performance expectations for accessing the content include: generally uninterrupted availability, maintenance windows scheduled to minimize disruption, and sufficient bandwidth and system capacity to provide response time comparable to that experienced by users of similar websites.

Archiving and Perpetual Access
Unless otherwise agreed, the acquiring institution will retain access to the digital content in perpetuity either at the provider's site, from a copy maintained by the acquiring institution, or from a third party archive.... Providers may charge a reasonable annual fee to recover their costs for providing continuing access following termination of a subscription or for preparing archival copies.

SERU Registry and Logo
To help promote SERU and aid interested parties in knowing who was willing to use SERU in lieu of a license, a SERU Registry was established on the NISO website. An online form is available for publishers, libraries, and consortia to sign up. It is understood that SERU may not apply to or be appropriate for all products in all situations and the online form allows publishers to identify the products to which use of SERU is limited; libraries/consortia can indicate a price point beyond which a license is required. Joining this Registry does not place any requirement on the parties to commit to use SERU every time, and registrants may revert back to a license whenever they choose. As of December 2014, the registry had grown to 126 publishers/content providers, 266 libraries, and 11 consortia.

To further assist interested parties to announce and promote their SERU participation, a SERU logo was developed and made available to any organization that registered. Publishers are encouraged to display the logo on the webpage for any products that are offered in accordance with SERU and its terms of use. Libraries/consortia are also encouraged to show the logo, where relevant, to show their interest in using SERU. The logo is to be linked to the NISO SERU website, located at www.niso.org/workrooms/seru.

The logo is available in several formats (GIF, JPEG, and EPS), color or black/white, with or without taglines. Several of the logo variations are illustrated in Figure 1.

Implementing SERU
Using SERU is easy. Just follow the steps below.

1. Read the (short) SERU Recommended Practice document. Share the SERU document with key stakeholders within your operation, including your legal counsel, as SERU defers to US copyright law as the backstop for any legal actions.

Figure 1: Several SERU logo versions

2 Once you've determined your organization's willingness to use SERU, sign up for the SERU Registry using the online form on the NISO website.

» You will need to identify a lead contact for SERU who should be ready to answer questions about your organization's use of SERU. (Anyone in the organization involved with acquisition, sales, marketing, etc. should be briefed about SERU, how it will be used, and who your in-house SERU "expert" is.)

» Content providers should note on the sign-up form if the use of SERU is limited to some products and not others. No one is required to use SERU for indicated products in every instance; registering simply means a willingness to use it for content sales when it suits both the provider and the client. For more information, see *SERU for Publishers* on the SERU website.

» Libraries or other acquiring institutions should note on the registry submission if their use of SERU has any limits, e.g., a maximum price point. For more information, see *SERU for Libraries* on the SERU website.

3 Check the SERU Registry to see if the party you want to work with is listed. If included, get in touch with the identified contact person; this could shorten the process of using SERU. If not listed, that doesn't mean you can't use SERU. You may have to initiate a discussion about SERU and educate the other party about its benefits.

4 If both parties agree to use SERU:

» The acquiring party sends an e-mail or purchase order to the content provider that includes a statement that you are using SERU in place of a license. The purchase order or similar document should include specific business terms that affect the price such as the amount of content and length of access to it. Publishers should clearly state factors affecting the price and libraries should be clear about their user population. Purchase communications should reference SERU with a statement to the effect that: *"In the absence of a separate license agreement, XXXXXXX follows the SERU guidelines, as published at the NISO SERU website: http://www.niso.org/workrooms/seru/."*

» The content provider generates an invoice. It is recommended that the invoice includes the same SERU statement quoted immediately above.

The SERU statements should be used only by mutual agreement between the publisher and the acquiring institution. If one or both partners in a transaction are not comfortable with the SERU approach or the statements of shared understanding, then a negotiated license is appropriate. If either party desires to make changes to the statements, this could indicate that developing a license agreement is appropriate in lieu of using SERU. Neither publishers nor acquiring institutions should require their partner to accept SERU if either prefers a license agreement.

The SERU Standing Committee continues to support and promote the SERU Recommended Practice, and to educate libraries and publishers via direct contacts and public presentations at industry conferences. A public e-mail list is also available to ask questions or share implementation experiences about SERU.

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SERU website
http://www.niso.org/workrooms/seru/

SERU Recommended Practice
http://www.niso.org/publications/rp/RP-7-2012_SERU.pdf

SERU Registry
http://www.niso.org/workrooms/seru/registry/

Marshall, Mary E. "Implications for a Medium Sized Publisher Using SERU." *Information Standards Quarterly*, Fall 2011, 23 (4): 18-21.
http://dx.doi.org/10.3789/isqv23n4.2011.04

**RELEVANT
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