

## E-Resources Licensing: The Good, The Bad, The Ugly Part 1



- **Introduction**
  - Todd Carpenter, Managing Director, NISO
- **Contracts Basics**
- **Terms to be Mapped to ERMs: Supply; Usage; General**
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- **Introduction to ONIX-PL (ONIX for Publications Licenses)**
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NISO Webinar • September 9, 2009



## NISO 2009 Events

<http://www.niso.org/news/events/2009/>

- September 14: **NISO Open Teleconference: KBART** (Free!)
- September 16 (NISO Webinar): **E-Resources Licensing: The Good, The Bad, The Ugly - Part II**
- October 8-9 (Boston, MA): **Library Resource Management Systems**
- October 13: **NISO Open Teleconference**
- October 14 (NISO Webinar): **Bibliographic Control Alphabet Soup: AACR to RDA and Evolution of MARC**
- November 9: **NISO Open Teleconference**
- November 11 (NISO Webinar): **Data, Data Everywhere: Migration and System Population Practices**
- December 9 (NISO Webinar): **ONIX for Publication Licenses: Adding Structure to Legalese**
- December 14: **NISO Open Teleconference**

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## Contract Basics

## Elements of a Contract

- In order to be enforceable, a contract must include the following elements:
  - Offer
  - Acceptance
  - Consideration

## Offer

- The offer will contain terms, that help define the scope of the agreement
- In the case of a license agreement, the Licensor makes an offer to an institution (or an individual) for defined use of digital products.
- Terms must be specific and definite because the offer has to identify the basic obligation of the contract.

## Acceptance

- Acceptance is an acknowledgment by the person to whom the offer was made that the terms of the offer have been accepted.
- The acceptance must be communicated to the person who proposed the deal.
- Negotiation and acceptance by both parties is often considered a "meeting of the minds."

## Consideration

- Consideration is the agreed upon exchange of something of value.
- Usually consideration is in the form of money, property or services.
- An agreement without consideration is not a valid contract.

## Other Requirements

- Competence - each party has the legal capacity to make a contract
- Consent - each party to the contract must agree to the terms of the contract
  - NOTE: The law presumes you have consented to a contract by signing it or other type of assent, such as clicking on "I accept" buttons in dialog boxes on your computer screen.
- Legality - for a contract to be enforceable, it must involve a legal activity.

## License Agreements

- What are the different types, and how do they affect Libraries?
  - Shrink-wrapped
  - Imbedded within the disc or diskette
  - Online click-on licenses at web sites
  - Formal contracts

## License Agreements – Types:

- **Shrink-wrapped licenses**
  - Arrive packaged with the product
  - Contain standardized terms and language
  - Infer that use of the product = license acceptance

## License Agreements – Types:

- **Imbedded licenses**
  - Arrive imbedded within the product
  - Contain standardized terms and language
  - Cannot be viewed until product is installed
  - Infer that use of the product = license acceptance

## License Agreements – Types:

- **Online or "Click-on" licenses**
  - Appear on product web site; may not be obvious
  - Contain standardized terms and language
  - Registration for access may require "click-on" which asserts license acceptance
  - May require review, negotiation, and signature

## License Agreements – Types:

- **Formal contracts**
  - Arrive before, during, or after order process
  - Contain complex, standardized terms and language
  - Product cannot be acquired without authorized signature
  - Require review, negotiation, and signature

## DLF ERMI Terms of Use

### *Authorized User Definition*

**The language in the contract that defines the group of users allowed to use the Electronic Product.**

- “Licensed for academic use by faculty, staff, and students only.”

### *Fair Use Clause Indicator*

**A clause that affirms statutory fair use rights under U.S. Copyright law (17 USC Section 107) or that the agreement does not restrict or abrogate the rights of the licensee or its user community under copyright law.**

- “May download or print limited copies in accordance with the restrictions of the Copyright Act of 1976 with regards to “Fair Use.”

### *Digitally Copy*

**The right of the licensee and authorized users to download and digitally copy a portion of the licensed materials.**

- “Licensee and Authorized users may download and digitally copy a reasonable portion of the Licensed materials.”

### *Digitally Copy Term Note*

**Information which qualifies a permissions statement on Digitally Copy**

- “Users may download and print articles for personal use and archive contents on their own personal computers.”

## ***Print Copy***

**The right of the licensee and authorized users to print a portion of the licensed materials**

- “Single, printed copies of individual articles may be made for private research.”

## ***Print Copy Term Note***

**Information which qualifies a permissions statement on Print Copy**

- “During any 24 hour period, Subscriber may print up to 20 screens of service content per Solo user, or 20 screens of content multiplied by the number of Concurrent Users.”

## ***Scholarly Sharing***

**The right of authorized users and/or the licensee to transmit hard copy or an electronic copy of a portion of the licensed materials to a third party for personal, scholarly, educational, scientific or professional use.**

- “Users may send one copy by email, hardcopy, or fax to one person at another location for that individual’s personal use.”

## ***Scholarly Sharing Term Note***

**Information which qualifies a permissions statement on Scholarly Sharing**

- “A user may transmit hard copies or electronic copies of the materials to anyone who is not a user authorized under this license, provided such transmissions are not on a systematic basis.”

## ***Interlibrary Loan Print or Fax***

**The right to provide the licensed materials via interlibrary loan by way of print copies or facsimile transmission**

- “Licensee may fulfill requests from other institutions, a practice commonly called Interlibrary Loan... All Interlibrary Loans shall be made by post, fax, or secure electronic transmission.”

## ***Interlibrary Loan Secure Electronic Transmission***

**The right to provide the license materials via interlibrary loan by way of secure electronic transmission**

- “Licensee and Authorized users may download and digitally copy a reasonable portion of the Licensed materials.”

### ***Interlibrary Loan Electronic***

**The right to provide the licensed materials via interlibrary loan by way of electronic copies**

- “Licensee may supply to an Authorized User of another library single copies of an individual document by post, fax, or electronic transmission via the Internet.”

### ***Interlibrary Loan Term Note***

**Additional information related to interlibrary loan**

- “ILL is limited to Authorized Users of another library within the same country as the Licensee.”

### ***Course Reserve: Print***

**The right to make print copies of the licensed materials and place them in a controlled circulation area of the library for reserve reading in conjunction with specific courses of instruction**

- “The libraries and registered campus network users may store articles for reserve use in either paper or electronic form.”

### ***Course Reserve: Electronic/Cached copy***

**The right to make electronic copies of the licensed materials and store them on a secure network**

- “Licensee may incorporate parts of the Licensed Materials into Electronic Reserve collections for the use of Authorized Users in the course of instruction at the Licensee’s institution.”

### ***Course Reserve Term Note***

**Information which qualifies a permissions statement on Course Reserves**

- “Copies of such items shall be deleted by the Licensee when they are no longer used for such purpose.”

### ***Electronic Link***

**The right to link to the licensed material**

- “Licensee may provide electronic links to the License Materials from Licensee’s web page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed materials to Authorized Users.”

### ***Course Pack: Print***

**The right to use licensed materials in collections or compilations of materials assembled in a print format by faculty members for use by students in a class for purposes of instruction**

- “Licensee may incorporate parts of the Licensed Materials in printed Course packs for the use of Authorized Users in the course of instruction at the Licensee’s institution.”

### ***Course Pack: Electronic***

**The right to use licensed materials in collections or compilations of materials assembled in an electronic format by faculty members for use by students in a class for purposes of instruction**

- “Licensee may incorporate parts of the work in electronic Course Packs for the use of Authorized Users in the course of instruction.”

### ***Course Pack Term Note***

**Information which qualifies a permissions statement on Course Packs**

- “Course Packs shall not be made available for Commercial Use.” “Each item in a Course Pack shall carry the Publisher’s copyright notice.”

### ***Remote Access***

**The right of an authorized user to gain access to an E-product from an off-site location**

- “Only current students, faculty and staff may obtain external access through an <> unlimited user account.”

### ***Concurrent User***

**The licensed number of concurrent users for a resource**

- “Often found on pricing schedules that are attached as an addendum to the licenses. Number of users can depend on the selected pricing package. For example: Addendum may include the name of the product selected, chart with number of users allowed per site, and price.”

### ***Concurrent User Note***

**A specific explanation of how users are allocated or shared if pooled or platform based.**

- “8 concurrent users shared among 3 member libraries.”

### ***Other Use Restriction Note***

#### **Additional information about other use restrictions not adequately described elsewhere**

- “You will not upload, post, or otherwise make available through the Services any Content protected by copyright, trademark, or other proprietary right without the express permission of the owner of the copyright, trademark, or other proprietary right and the burden of determining that any material is not protected by copyright rests with you.”

### ***Perpetual Access Right***

#### **The right to permanently access the licensed materials paid for during the period of the license agreement**

- “On termination of this license, [the publisher] shall and Licensee may provide continuing access for authorized users to that part of the Licensed Material which was published or added to the Licensed Material within the Subscription Period, either from the [publisher’s] server(s) or from a third party server or by supplying electronic files to the Licensee.”

### ***Perpetual Access Note***

#### **Additional information related to perpetual access**

- “Licensor acknowledges that the long term preservation of the content licensed hereunder is of critical importance to Licensee. Licensor agrees to license the content and furnish the applicable electronic source files to Portico or another acceptable non-profit third party archive with a view to ensuring that the content will be preserved and available in the event the content is no longer offered by Licensor or a successor publisher.”

### ***Archiving Right***

#### **The right to permanently retain an electronic copy of the licensed materials**

- “A subscribing library may download and archive materials at its own site and place contents on its own file server, including electronic reserves, providing that access to the file servers is restricted to the campus/institutional community.”

### ***Archiving Format***

#### **The format of the archival content**

- “A large part of [the database] is available on CD-ROM and can be obtained for additional fees.”

### ***Archiving Note***

#### **Additional information related to archiving rights, product and format**

## Confidentiality of User Information Indicator

The requirement that user data should not be shared with third parties, reused or resold without permission

- “The Distributor and the Producer agree not to disclose any information that would allow third parties to have specific knowledge of the Client’s queries.”

## Interlibrary Loan Electronic

The right to provide the licensed materials via interlibrary loan by way of electronic copies

- “Licensee may supply to an Authorized User of another library single copies of an individual document by post, fax, or electronic transmission via the Internet.”

## ONIX for Publications Licenses (ONIX-PL)

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Coordinator for Electronic Resource Acquisitions, University of Texas at Austin Libraries

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## First of all, what is ONIX?

- ONIX = ONLINE Information eXchange
- International metadata standard for publishing industry information
- Expressed in XML
- Developed cooperatively by three bodies:
  - EDItEUR
  - Book Industry Communications (BIC)
  - Book Industry Study Group (BISG)

## What is ONIX-PL?

- XML schema that allows any publisher license to be expressed electronically in a machine-readable format
- Supports communication of licensing terms for electronic resources from a publisher to a user institution
- Enables libraries to:
  - Load licenses into ERMs
  - Link licenses to digital resources
  - Communicate usage terms to users

## How does it work?

- Not a Rights Expression Language and is not designed to prevent or enable access
- Descriptive, not prescriptive
- Expression via structured XML elements
- Data dictionary
- OPLE editing tool

## How ONIX-PL Can Help

- Simplify cumbersome licensing processes
- Eliminate manual mapping and entry of license terms into ERMS
- Enable easier identification of key terms
- Improve access to terms important to users
- Offer publishers the ability to maintain licenses in a standard machine-readable format
- Enhance communication between publishers, librarians, subscription agents, and others

## For more information:

- ONIX-PL Home:
  - <http://www.editeur.org/21/ONIX-PL/>
- ONIX-PL Working Group:
  - <http://www.niso.org/workrooms/onixpl>
- ONIXPLinfo Mailing List:
  - <http://www.niso.org/lists/onixplinfo/>

Thank you!

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## Questions?

All questions will be posted with presenter answers on the NISO website following the webinar:

<http://www.niso.org/news/events/2009/eresources09/>

