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SERU: A Shared Electronic Resource Understanding

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NISO SERU Working Group

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Foreword

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Table of Contents

Foreword.....	i
Introduction	1
Guidelines for Implementing SERU	2
Statements of Common Understandings for Subscribing to Electronic Resources	3
The Subscription	3
The Subscribing Institution and Its Authorized Users.....	3
Use of Materials	3
Inappropriate Use.....	4
Confidentiality and Privacy	4
Online Performance and Service Provision.....	4
Archiving and Perpetual Access.....	5

SERU: A Shared Electronic Resource Understanding

Introduction

SERU embodies a desire by publishers and libraries for a cooperative and collaborative relationship that recognizes that the provision of timely, high-quality materials and their protection is in the mutual interests of all parties.

Libraries and publishers have a long history of cooperating in a non-litigious relationship that predates the introduction of electronic resources. When license agreements became commonplace in the digital publishing landscape more than a decade ago, most electronic resource transactions involved expensive content and inexperienced partners, and licenses made sense for almost every transaction. As more publishers began to offer electronic resources and industry norms have evolved, routine negotiation of licenses for all resources has increasingly become a burden for many libraries and publishers, particularly smaller publishers who perhaps do not have in-house lawyers or rights departments that can handle them.

SERU offers publishers and libraries the opportunity to save both the time and the costs associated with a negotiated and signed license agreement by agreeing to operate within a framework of shared understanding and good faith. The statements below provide a set of common understandings for publishers and libraries to reference as an alternative to a formal license when conducting business.

Neither the statements of understanding nor this document constitute a license agreement. Because SERU is not a license, legal terms (such as jurisdiction, warranties, and liabilities) are not used. Rather, the statements describe a set of commonly agreed-upon expectations for using and providing electronic resources. While licenses are appropriate in many situations, SERU offers an alternative when both the librarian and the publisher are satisfied with this approach.

NISO's SERU Working Group members largely reflect the interests of U.S. academic libraries and scholarly publishers. The Working Group comprises representatives from varying size academic libraries and varying types of publishers, consortia directors, subscription agents, and lawyers. The exploratory meeting that led to the formation of the Working Group was supported by two library and two publisher organizations that saw value in exploring the potential for a SERU document. Further background on the SERU project is available at the NISO website: <http://www.niso.org/committees/SERU/>.

SERU reflects some well-established and widely accepted common expectations between libraries and publishers. Purchase terms regarding what is being acquired (such as the price, the product, the length of access) will appear on a purchase order or document.

Guidelines for Implementing SERU

Publishers and subscribing institutions choosing to use SERU instead of a license for some of their resources are asked to indicate their support by registering at the NISO SERU website (<http://www.niso.org/committees/SERU/>). Registering does not require that SERU apply to all resources or all transactions.

Rather than reproducing SERU statements, publishers are encouraged to link to the SERU documents from their websites. The SERU text is not meant to be modified or copied and should not be presented as a click-through license.

The SERU statements should be used only by mutual agreement between the publisher and the subscribing 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. Neither publishers nor subscribing institutions should require their partner to accept SERU if either prefers a license agreement.

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/committees/SERU/>."

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.

Statements of Common Understandings for Subscribing to Electronic Resources

The Subscription

The subscriber acquires the right to use the subscribed content for a specified time period through payment of an agreed upon subscription fee. The nature and extent of the subscribed content should be clarified at the outset as the publisher may allow access to content additional to the subscription.

The publisher has secured the rights necessary to provide access to the content to the subscribing institution.

A subscription to the publisher's content provides a subscribing institution and its authorized users with access to the subscribed content. The number of concurrent users is not restricted unless otherwise explicitly agreed upon by the publisher and subscribing institution.

The Subscribing Institution and Its Authorized Users

The subscriber is generally understood to be a single institution. In cases of ambiguity, the publisher and subscriber will explicitly agree on a definition of the subscribing institution and the pricing that applies to it.

The authorized user population will be defined in institutionally appropriate ways that respect the business interests of the publisher. The publisher will rely upon the subscribing institution's judgment in defining its user community, but may challenge any interpretation that it considers damaging to its interests. Unless agreed to otherwise, the following authorized user definitions are generally accepted by both publishers and libraries:

- **Educational institutions** (such as schools, universities, and colleges): Authorized users of the subscribed content include the institution's currently enrolled students, faculty, affiliated and visiting researchers, regular and contract staff, and other authorized users of the campus/institutional network. Alumni are not considered part of the authorized user community unless explicitly agreed to between the publisher and subscriber.
- **Public libraries and other cultural memory institutions** (such as museums, archives, etc.): Authorized users of the subscribed content are the library's or institution's staff, registered patrons, and other authorized users of the institution's network.

Authorized users may access subscribed content from remote locations. Visitors to the organization, such as walk-in users, are also allowed to use the subscribed content while on the subscribing institution's premises but are understood to lose this access upon departure and are excluded from remote access privileges.

Use of Materials

Use of the subscribed content is generally governed by applicable copyright law. For subscribers in the United States, U.S. Copyright Law governs the use of subscribed content. Authorized uses include any uses permitted under the appropriate existing copyright law, including, where applicable, uses permitted as fair use.

SERU: A Shared Electronic Resource Understanding

Some of the accepted uses of subscribed content by a subscribing institution and its users include interlibrary loan and ad hoc sharing of single articles by individuals for purposes of scholarship or private study.

Inappropriate Use

The subscribing institution recognizes that the material provided as part of the subscription is a valuable business asset of the publisher and that misuse of this material, such as unauthorized resale or systematic redistribution, could negatively affect the publisher's business. Both publishers and subscribing institutions will make reasonable efforts to prevent the misuse of the subscribed content. The subscribing institution will employ appropriate measures to ensure that access is limited to authorized users and will not knowingly allow unauthorized users to gain access.

While the subscribing institution cannot control user behavior, an obligation to inform users of appropriate uses of the content is acknowledged, and the subscribing institution will cooperate with the publisher to resolve problems of inappropriate use.

When questionable activity such as systematic downloading is detected, publishers should notify the subscribing institution as soon as possible. If the subscribing institution detects inappropriate use, publishers should be notified as soon as possible. Both publishers and the subscribing institution should make every effort to resolve the incident quickly.

Suspension of access for the subscribing institution by a publisher may be necessary but should be an action of last resort and, if possible, notification should precede any suspension of access. Because legitimate activity (for example, access from a proxy server address or authorized data mining for research purposes) can sometimes be mistaken for systematic abuse, whenever possible publishers should employ appropriate techniques to detect true misuse and follow industry standards in this area as they emerge.

Confidentiality and Privacy

The subscribing institution and the publisher 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. The publisher should develop and post its privacy policy on its website.

Online Performance and Service Provision

An online subscription generally involves both content and service provision. Content with a print equivalent should be replicated online in as complete and timely a manner as possible.

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

Publishers recognize the importance of working with industry standards and best practices for online information delivery as these standards are developed and validated in the marketplace. Appropriate areas in which standards and best practices currently exist include: identifiers, usage statistics, link resolution, accessibility, and authentication.

Archiving and Perpetual Access

Both libraries and publishers recognize a responsibility to preserve electronic resources. In order to ensure future access, publishers should provide for secure archiving of the subscribed content to the extent that developing industry models allow, either by the subscribing institution or a trusted third party.

Unless otherwise agreed, upon terminating a subscription the subscribing institution will retain access to the digital version of the subscribed content either at the publisher's site, from a copy maintained by the subscribing institution, or from a third party archive.

The means of implementing perpetual access and securing a trusted third party to archive content may vary from case to case, but both should be made available to subscribing institutions in some form.

Publishers may charge a reasonable annual fee to recover their costs for providing continuing access following termination of a subscription or for preparing archival copies.