

Report on the Workshop 'Electronic Expression of Licensing Terms' held at Loughborough University on 22 May 2006.

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Abstract

The purpose of the workshop was to present the current status of the Electronic Expression of Licensing Terms project to a group of academic librarians and to get their feedback on possible benefits and uses. The main purpose of this report is to document the issues, concerns and ideas raised during the group discussion part of the workshop. Where necessary or beneficial, topics have been followed up with further discussion with librarians and other parties.

Workshop Attendees

Brian Green, BIC
David Martin, BIC
Gary Brewerton, Loughborough University library
Jon Knight, Loughborough University library
Laurence Bebbington, Nottingham University library
Alan Brine, DeMontford University library
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1. Introduction

The workshop began with presentations on the project and the current state of development of an XML schema for representing licensing terms. This is known formally as the ONIX for Licensing Terms Publisher License Format.

A license expressed in the Onix for Licensing Terms Publisher License format is a structured, actionable representation of a publisher's licence. Thus it unambiguously describes the usage terms of publishers' resources in a machine-understandable way. These terms could include permitted and prohibited usage conditions, notice periods and dates of renewal, calculations of fees for current and future years. It is envisaged that these machine-readable licences could be used as input to electronic resource management systems.

After the presentations a wide-ranging group discussion covered a variety of related topics. The following sections cover the themes and topics discussed, rather than the order in which individual points were raised.

In the following text, *ONIX for Licensing Terms* is abbreviated to *OLT* and *ONIX for Licensing Terms Publisher License Format* to *ONIX-PL*. The terms *ONIX-PL license* and *ONIX-PL expression* refer to a license expressed in the ONIX for Licensing Terms Publisher License Format.

2. Awareness and Enforcement

The priority in the design of the ONIX for Licensing Terms Publisher License Format is to express the relationship and terms of agreement between the licensor and licensee. Enforcement of this relationship is not a priority; nor is digital rights management. None-the-less, it may be possible to build enforcement mechanisms based on ONIX-PL licenses if necessary.

One application more in keeping with the design goals is the presentation of usage terms at the point of use. This could be very helpful in clarifying to users what is and what is not permissible under the terms of the license.

Academic library users are typically bound by an agreement with the library to adhere to the terms of publishers' licenses. Libraries then have a duty to inform users of the key terms of the licenses (though not to make complete licenses available). In the event of a dispute over a possible infringement of the terms of a license, the library could be liable if the user successfully argues that the library did not make the license terms clear.*

* This is related to the legal concept of *vicarious liability*. In employment law, an employer can be liable for the negligent actions of an employee whether or not the actions were specifically authorised by the employer. To avoid vicarious liability, an employer must demonstrate either that the employee was not negligent, but was reasonably careful, or that the employee was acting in his own right rather than on the employer's business.

Sometimes a user will ask a librarian whether a particular usage is permissible. Given the plethora of agreements in place, their complexity and the difficulty of accessing them, the librarian might well err on the side of caution and deny the user the right to use a resource in a perfectly acceptable way.

Use of OLT and suitable tools could be very useful here for both users and librarians. Certainly a tool for librarians to use to look up usage terms quickly and easily would be very useful in answering queries. Perhaps even more useful would be integration of ONIX-PL expressions into an Integrated Library System (ILS) so that users are presented with a list of usage rights at the time they access a resource. This would go a long way to making clear what is and is not permissible and could make disputes over infringements much easier to resolve.

Where a library has its own set of policies in addition to the publishers' licenses, it might also be useful if the system could combine the two and present users with their rights under the combined policies.

However, the workshop raised the related point that license agreements are currently kept confidential. By presenting users with usage terms automatically every time they access a resource, license terms are, to an extent, being made public. This could be undesirable, particularly where different institutions have negotiated different licenses for the same resource. The idea of a license for the license was raised, but it was suggested that it would be sufficient for the ONIX-PL expressions to have a relatively simple indication of which parts could be presented to users, the rest remaining confidential between the licensee and licensor. This is discussed in more detail in section 6.

3. Formulating and Negotiating Licenses

One of the first tools that will need to be developed is an authoring tool to create ONIX-PL expressions of licenses. It is hoped that publishers will give licenses to libraries in both paper and electronic form, and an ONIX-PL format authoring tool is essential for this to happen.

The workshop suggested that a license comparison tool would be useful to compare a proposed license received from a publisher with the library's own policy or with some preferred or 'ideal' license. It was suggested that libraries may be able to use such a tool to 'filter out' publishers that do not meet library policy and there was a hope that this possibility may eventually lead to more liberal licenses. Furthermore, the negotiation process could in some circumstances be turned on its head with the library sending an ONIX-PL expression to a publisher or aggregator and asking for a quote.

It was noted that when it comes to re-negotiation of licenses, the XML version of the license would have to be changed as well as the paper version. ONIX-PL expressions of licenses are complete and self-contained, so the changes would be made by replacement rather than by adding addenda. Provision has been made for identifying license version numbers and dates in the XML schema. It would be useful to have an update tool allowing existing ONIX-PL expressions to be updated. This could well be part of the main license authoring tool.

With two versions of the same license in use (the XML version and the print version), a question arises as to which would be legally binding in the event that there is seen to be some discrepancy. It was generally agreed that in the eyes of lawyers, the paper version would probably be the binding one.

It was also suggested that use of OLT might present an opportunity for more standardisation of features between licenses. There is currently much commonality in the basic features of different publishers' licences, but other features such as inter-library loans are more complicated and more various in their expressions. There is more discussion of related issues in the following section, Ambiguity and Specificity.

One area that tends to be quite poorly defined in license agreements is the service level agreement (SLA) for access to on-line resources. Perhaps this is because publishers are less comfortable in specifying obligations on themselves than on others. If ONIX-PL were to publish terminology for dealing with SLAs they might be more widely specified. Where SLAs do exist at the moment, they tend to be fairly basic. Some of the concepts used include:

- Percentage of up-time.
- Hours of availability (e.g. 6am-12am Monday to Saturday)
- Hours when technical support is available
- Response time for queries
- Notice period for any planned downtime

A key part of the OLT system is the OLT dictionary, sometimes known as the *ontology*. This provides a rich but well-defined vocabulary for expressing many of the elements and terms of the format. It is expected that the dictionary will expand over time as more terms are added. It was suggested that as this happens publishers might construct their licenses using the terms available in the dictionary. This would make construction of the ONIX-PL expression simpler and it would result in a move towards more standardisation in the formulation of licenses.

It might even be possible to develop a tool that generates a "written" license directly from an ONIX-PL expression. Lawyers are traditionally sceptical of machine-generated legalese, but there could be advantages even if the machine-generated version is used only as a starting point.

4. Ambiguity and Specificity

During the development and testing of the ONIX-PL format, a number of logical contradictions have been found between parts of existing written licenses. The validation that is a by-product of the conversion to a formal XML expression is of great value in itself.

Some licenses are ambiguous because they don't fully define some potential uses of licensed material. If particular uses are not mentioned, they often have to be assumed to be prohibited. Either that, or clarification has to be sought in writing from the publisher. Examples include:

- Inter-library loans. These are difficult to express rigorously and are often glossed over in licenses.
- Distribution to students. A lecturer may want to use a resource for teaching purposes, but be prohibited from doing so by a limit on the number of copies he or she can make. This could be at the same time that the students themselves are all allowed to make copies for themselves. Publishers sometimes use a term such as "a reasonable number" where specification of an exact number might be unduly proscriptive, but this can lead to disputes. The OLT dictionary already supports the concept of "a reasonable number" as well as specific limits such as "up to 10". It was suggested that a useful addition would be a limit set by the number of people in a user group, such as "1 copy per student in a lecture group". The general view was that this ability to be 'non-specific' would be necessary in some cases.
- Mounting on a Virtual Learning Environment. It is often not clear whether a digital resource can be mounted on an internal secure network for access by students.
- Printing out. Licenses may prohibit photocopying but not printing of multiple paper copies from the digital copy.
- Commercial and non-commercial use. Academic licenses often specify that resources are for non-commercial use, but if a researcher uses a resource and subsequently publishes a book for commercial gain, then it could be argued that the resource was used for commercial purposes.

It was suggested that the ONIX-PL authoring tools might have some influence on the way licenses are formulated. As has already been mentioned it should not be possible to create a license that is self-contradictory. If the authoring tools are ever used as the starting point for creation of licenses (rather than simply for conversion of paper licenses), they could have great influence. The dictionary of terms effectively determines what a license may say, and the way in which options are presented to users could guide them into producing more clearly defined licenses.

5. Management

Management of publishers' licenses can take up a great deal of a librarian's time. Typically there are many agreements stored away in filing cabinets, all written in different terms, with different management requirements.

One benefit of using ONIX-PL expressions of licenses was mentioned in the Awareness and Enforcement section. If a question arises about usage terms of a particular resource, it would be much easier to use some OLT-aware tool than to go to the filing cabinet and try to find the relevant part of the relevant printed license. The electronic system would result in a much greater degree of certainty about usage rights and a much reduced amount of effort to obtain it.

Another common management task is handling expiration, renewal and re-negotiation of licenses. Currently, librarians tend to note down the requirements in an ad-hoc system of databases and spreadsheets that then have to be consulted on a regular basis to determine what actions are required. For a set of licenses in ONIX-PL format, an automated system could be developed to generate notifications as and when necessary.

Another area of interest here is the management of fee payment. This can be more or less complex depending on the terms of the license, but many current agreements are annual subscriptions as pay-per-click deals which are difficult to budget for. Payment terms can include:

- The period covered.
- Whether payment is to be made upfront or periodically. Payments are often made annually but sometimes monthly.
- Renewal date.
- Cancellation period.
- What happens if the Library doesn't cancel. The subscription might continue or end automatically.

The actual fee is either included in the payment terms or listed separately, with the payment terms referencing "agreed" or "specified" amounts. If all these terms could be encapsulated in the ONIX-PL format and tools built to notify and manage dates and payments, a great deal of librarians' time could be saved.

6. Technology

During the course of the workshop discussions, a few technically-oriented issues arose. These are discussed in this section.

One of the fundamental parts of the ONIX for Licensing Terms system is the ONIX Licensing Terms Dictionary. As mentioned before, this is essentially a well-defined vocabulary for expressing the key concepts used in publishers' licenses. It is envisaged that over time the dictionary will be expanded and that the vocabulary may be clarified. But terms will not be deleted; nor will their meanings be changed.

One concern raised was that ILS vendors might charge libraries for updating OLT systems whenever a new dictionary is released. It was agreed that this would be prohibitive to the uptake and acceptance of OLT. It would be much better for the latest version of the dictionary to be available online (perhaps via the EDItEUR web site) and updates to be performed automatically.

The discussion of updates to the OLT dictionary naturally led on to the use of version numbers. The ONIX-PL format already includes a version number to identify the version of the XML schema being used. This would enable an agent to reject licenses received in a more recent format than it understands.

It was suggested that ONIX-PL licenses should also identify the required version of the licensing terms dictionary, as it might be updated relatively

frequently. This would enable agents to fetch the required or latest version, or to fail gracefully if a sufficiently recent version is unavailable at the time.

The idea of informing library users of usage terms was discussed in the Awareness and Enforcement section of this report, and the issue of license confidentiality was considered. It may be necessary to enhance the XML schema to allow indication of which parts of the license can be revealed to users. This could be very complicated to do in general terms, but a relatively simple "divulgence policy" would probably be sufficient. This could just indicate whether or not the usage terms could be divulged to users; or perhaps to which groups of users they could be divulged.

7. Uptake and Acceptance

For OLT to take off, there is a need for licenses to be available in the ONIX-PL format, and for systems to be capable of using them. Like the proverbial chicken and egg, which comes first is not obvious. However, provision of tools for creating ONIX-PL expressions and awareness of the benefits of using them are likely to be key factors.

Vendors of integrated library systems would be encouraged to provide ONIX-PL functionality if they could use it as a selling point for their products. Some have already expressed an interest, but development is more likely if there are ONIX-PL licenses available for processing. Libraries will be keen for this to happen so they can reap the benefits already identified in this report.

It is likely that larger publishers will also be keen, and a number have already expressed interest. As the larger publishers account for the majority of publications, this is a good sign. ONIX-PL could make publishers' licenses easier to adhere to and payments easier to manage, but some publishers might be wary of the idea or sceptical of the benefits compared with the costs. It was suggested that some publishers might be concerned that a user presented with a barrage of warnings about usage restrictions might be reluctant to use a resource at all. With libraries considering usage figures in renewal decisions, it is important that any usage terms or restrictions that are presented to users are presented in a way that does not adversely impact the usability of the resource/service.

If there is any initial reluctance on the part of some publishers to create ONIX-PL licenses, libraries could themselves bridge the gap by using authoring tools to create ONIX-PL expressions of their own licenses. In some cases it might be possible for libraries to pool their efforts and share the ONIX-PL licenses they create.

The investment required by libraries could be an issue. However, it is generally easier for libraries to find funding for projects that have obvious benefits for users than for those which only help backroom staff. In this respect, the ability of OLT to provide clarification of usage rights directly to end-users could be a selling point.

Generally, the feeling was that OLT is a good thing and most parties would be keen to make it work.

8. Summary of Uses and Tools

The different areas of discussion identified several benefits to libraries of using OLT, and identified tools that would be required to get the most out of it. This section presents a brief summary of those benefits and tools. The numbers in square brackets refer to the section where this tool and/or benefit is discussed.

- **Generate/update ONIX-PL expressions.** One of the first requirements will be a tool to generate ONIX-PL expressions. The tool should also be able to start with an existing expression and allow it to be modified to create new versions during the negotiation/re-negotiation process. The tool will be primarily for use by publishers, but libraries could also make use of it for creating “preferred” licenses for publishers to quote against, or ONIX-PL versions of licences otherwise only available in paper form. [3]
- **Look up/extract usage terms.** A stand-alone tool would make it easier for librarians to look up usage terms for their own purposes or in order to answer queries from users. However, integration into library systems could allow presentation of usage rights directly to users. [2]
- **Compare ONIX-PL expressions.** It would be useful to be able to compare a proposed license from a publisher with a preferred license, or a proposed license with a library’s own policies. [3]
- **Intersect two ONIX-PL expressions.** It could be useful to be able to combine a publisher’s license with the library’s own policy to create an aggregated set of usage rights for a resource. [2]
- **Generate written form from ONIX-PL expression.** This is more a publisher function than a library function, but could encourage more standardisation. [3]
- **Notification about renewal dates etc.** Having all licenses in a system that could produce important notifications automatically would be of tremendous benefit. [5]
- **Manage payment of fees.** Again, this is a complex task that could be made much easier through automation. [5]
- **More standardisation and less ambiguity.** It was suggested that the existence of a standard dictionary of licensing terms and tools for creating licences could lead to more uniformity in the ways different publishers’ licenses are expressed. [3, 4]
- **Display ONIX-PL expressions.** Whereas the tool to create ONIX-PL licenses is essential, another very useful tool would simply display such licenses. Different publishers’ paper licenses vary greatly in their presentation and librarians can spend a great deal of time understanding them and finding the information they need. Presentation in a common format could greatly simplify these processes, especially where an automated tool is unavailable for the particular task in hand. [5]