

## DO I HAVE TO NEGOTIATE A LICENSE FOR EVERY E-RESOURCE I BUY? DEVELOPING A BEST PRACTICE OPTION

by *Karla Hahn, Director, Office of Scholarly Communication, ARL*

Many librarians and publishers believe that a license agreement must be signed as part of the sale of every electronic resource. While license agreements are helpful for consortia or expensive products, they can be impractical for the long tail of scholarly publishing where the growing number of transactions is burdensome for libraries and prohibitively expensive for smaller publishers.

Model licenses have been helpful in many ways, but both libraries and publishers report that by and large they do not eliminate handling costs for librarians and publishers because some negotiations typically remain. At the same time, publishers and libraries have learned a lot in the 10 years we have been signing licenses. For the most part it appears that we have sorted out balanced positions on many topics (authorized users, interlibrary loan, issues of unauthorized use). But the question remains, at least for situations where the risk of problems beyond clearly illegal acts is low, is there some other way to arrange for e-resource sales to libraries?

One indicator that an alternative to licenses might be possible is the observation that some publishers have simply been transacting sales of e-resources to libraries without requiring licenses. Clearly some publishers are already willing to rely on their trust of their customers and the protections of existing law. This suggests that perhaps there is a way to build on this trust to create a recognized no-license alternative that publishers can chose for selling their products.

### The Solution?

ARL, the Association of Learned and Professional Society Publishers, SPARC, and the Society for Scholarly Publishing agreed that finding an alternative to licenses was an important issue that librarians and publishers should work together to address; therefore the four organizations cosponsored an exploratory meeting at ARL in October 2006. This meeting built upon a series of presentations made by Judy Luther, Informed Solutions, and Selden Lamoureux, University of North Carolina, at library meetings and publisher conferences.

A small planning group organized a full-day invitational meeting that brought together a representative group of librarians, publishers, lawyers, and a subscription agent to discuss the licensing situation and explore possible courses of action. After looking at the risks perceived by librarians and publishers that initially prompted the creation of license agreements, the group became convinced that it is possible to develop a new way to address

the exposure that each party felt in dealing with electronic resources. The meeting participants then considered potential approaches that would enable acquiring electronic content without a license agreement.

Despite the range of perspectives on the problem, there was consensus that a best practice approach was possible and could be useful in many cases. The best practice approach would rely on existing law and create a document describing a brief list of expectations that could be shared by librarians and publishers. If a publisher felt that the best practices and existing law were sufficient to manage their perceived risk, they could market their product indicating their reliance on the expectations described in the best practices and forgo use of a formal license agreement.

After considering several options, the National Information Standards Organization (NISO) was identified as the best trusted third party to support development of a best practice statement and provide a mechanism for adoption within the library and publishing communities. The meeting participants generated a list of key topics (such as users and reasonable uses) that they believed could be addressed with language defining common expectations.

### Next Steps

The next steps will be working with NISO to begin the process of developing the best practice statement with a formal working group. Participants in the group that met in October became so committed to this project that they all agreed to continue working with the project as it moved to NISO.

Once developed, publisher associations could review the best practices for endorsement as a reasonable option available to publishers selling electronic resources. It is hard to guess what proportion of the e-resource market would choose to adopt an option like this. If the use of the best practices becomes broadly understood and seen as successful, interest in using this approach for larger sales could grow over time.

The best practice approach offers benefits to many participants in the scholarly publishing marketplace. This option could greatly simplify library handling costs for many electronic products. While probably inappropriate for consortia agreements or expensive deals, the best practice approach has the potential, particularly for small publishers and others selling access to inexpensive resources, to largely eliminate licensing costs. Common use of the best practices approach would make it easier and cheaper for serial vendors to provide their services to both publishers and libraries. If successful, the approach would allow a growing number of smaller players to continue to succeed in the scholarly publishing marketplace and eliminate the need to pass licensing costs on to customers.