



BOOK INDUSTRY COMMUNICATION LTD

BIC Acquisitions & Divestments for Digital Products

Best Practice Guidelines

Version 1.0

February 2018

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Purpose & Scope

This document is designed to offer guidance and advice on Best Practice with regards to the communication of changes of ownership via acquisition, divestment or merger. It is expected that this document will be used by acquiring, divesting and/or merging publishers primarily and referred to by retailers, data aggregators, distributors, any/all 3rd parties involved in the supply of eBooks in the book industry.

It is expected that this Best Practice Guidelines document will be used once the key preliminary legal work has been completed.

The accompanying document “Mergers and Acquisitions: an Introduction to the Role of your Legal Team” covers the key preliminary legal work areas as follows:

- Preparing for the deal
 - Deal structure
 - Preliminary documents
 - Due diligence
- Documenting the deal
 - Main agreement
 - Disclosure letter
 - Ancillary documents
- Signing, Completion and Post-Completion

Included in the scope of this document are eBooks, downloadable audiobooks and digital products.

Print books will be addressed in a separate document.

Working Document

This is a working document and will be reviewed regularly by BIC upon receipt of feedback from those that have used it, and in response to changes in market conditions.

Have you used this document?

If you have used this document to help with your organisation's acquisition / divestment processes we'd like to hear your feedback with regards to how useful you found the advice given.

Please send any feedback to info@bic.org.uk



Definitions

Merger – For the purposes of this document, the term “merger” is the legal consolidation of two (or more) publishers into one entity, whereas an “acquisition” occurs when one publisher takes ownership of another publisher’s ISBN list, or section of ISBN list.

Publisher A – For the purposes of this document “Publisher A” is the acquiring publisher.

Publisher B – For the purposes of this document, “Publisher B” is the divesting publisher and is still trading, and still capable of providing ONIX feeds until the Date of Transfer.

3rd Parties – For the purposes of this document, the term “3rd Parties” includes all parties / organisations involved in the Digital Product Supply Chain that are neither Publisher A nor Publisher B. They may work with or on behalf of either Publishers A and/or B, or may work independently. This may include (but is not limited to) ISBN agencies, retailers, institutions, aggregators and distributors.

Declaration of Transfer – A written document on letter headed paper signed by Publisher B or Publisher B's authorised representative confirming the acquisition.

Effective Transfer Date – See “Date of Transfer” below.

Date of Transfer – This is the date on which legal ownership of and all rights for the list of affected ISBNs transfer from Publisher B to Publisher A. It should be detailed in the contract between Publisher A and Publisher B.

Digital Product Supply Chain – For the purposes of this document, the term “Digital Product Supply Chain” is used to describe the sequence of events relating to the creation, collection and distribution of information data relating to the ISBNs affected by the acquisition and/or divestment process. This information will be used by key stakeholders to understand the nature and ownership of products to which the ISBNs refer. The best practice recommended by BIC, for the transmission, collection and distribution of product/ISBN information throughout this chain, is that is be done via ONIX3.0

Scenario

Publisher A purchases a list or part of a list from Publisher B / Publisher A purchases Publisher B

Step 1: Publisher to Publisher Information Exchange

Once this scenario is confirmed and can be discussed between the parties, and after the operational and contractual implications have been discussed between both Publishers, all assets should be issued to Publisher A from Publisher B in accordance with the terms of the contract. It is recommended that this happens as soon as possible, and should include all files, including master files.

In addition, Publisher B needs to send to Publisher A:

1. A complete list, as agreed by both parties, detailing all affected ISBNs (by ISBN), all digital formats.
2. A full list of all its 3rd parties with details of key contacts.
3. A list, confirming all associated assets by ISBN held by 3rd parties, pertaining only to those ISBNs affected by transfer of ownership.
4. A full ONIX file (or file in pre-agreed format) of all affected ISBNs so that Publisher A can make an early assessment of the quality of Publisher B's metadata. Publisher A is exposed to enormous risk very late in the process if this is not done at this stage.

With regards to content files received from Publisher B, BIC recommends that Publisher A checks as soon as possible that all received content files and marketing images meet current retailer standards, so that all digital products can be made available for sale with major retailers as expected. Some older files may not meet current retailer standards and may adversely affect product availability.

Step 2: 3rd Parties

Once this scenario can be made public, Publisher B and Publisher A should both let their 3rd parties know and send the following documents to their 3rd parties:

1. A complete list, as agreed by both parties, detailing all affected ISBNs (by ISBN), all digital formats.
2. Declaration of transfer, on legally acceptable documentation (physical or digital) from Publisher B or Publisher B's authorised representative.
3. If Publisher A has specific requirements about how the acquired ISBNs should be represented bibliographically now is the time to inform data aggregators. The default position assumed by data aggregators will be that the acquired ISBNs will simply all be represented under Publisher A's name.

At this time, the communication to 3rd parties of any potential changes to DRM at ISBN level should be considered / planned for by Publisher A.

Step 3: Transfer Sales Reporting

Once Publisher A has received the list of 3rd parties, Publisher A should contact each of them as appropriate, informing them of the change, attaching the Declaration of Transfer, and detailing the bank accounts to be used for payment of sales going forwards from the effective date of transfer.

Upon receipt of these documents, the 3rd parties should actively respond to Publisher A to acknowledge the message. It is Publisher A's responsibility to chase up each of the 3rd parties if acknowledgement is not received.

Step 4: Transition Period

Publisher A and Publisher B may mutually agree to a transition period should this be required, which should include agreement on start and end dates. The end date may, or may not be the Date of Transfer.

Should a transition period be required, both parties should agree what will happen during the transition period with regards to notifying 3rd parties, updates to content, data, cover images, asset management and records, to give Publisher A the opportunity to prepare for the acquisition and to avoid providing suppliers with conflicting information.

Publishers A & B may consider formalising this process within a Transitional Services Agreement.

By the end of this transition period, all sales should be correctly assigned to Publisher A.

Step 5: Notice of Transfer

At the start of the transition period, on a date mutually agreed between Publisher A and Publisher B, Publisher A will send electronic transfer notices to all its 3rd parties / stakeholders in the digital product supply chain, including (but not limited to) Bowker, Nielsen BDS, PLS and the ISBN agency. Best practice for doing this is to use ONIX 3.0 (*please refer to Appendix A at the end of this document*). BIC recommends that a minimum of 10 working days be allowed for this in order for the information to flow through to the necessary places.

Publisher A should be aware that the Notice of Transfer often has strict dates attached to it - Publisher A may be contractually required to deliver complete and accurate metadata to retail partners on a specific day; Publisher A needs to know in advance that it can do this. Poor metadata could entirely prevent an ONIX message indicating transfer of ownership being sent. The ability to deliver a successful ONIX transfer notice requires successful exchange of metadata between Publisher A and B.

Step 6: Cessation & Re-Starting of ONIX messages

Publisher B will need to cease sending ONIX / electronic information for those ISBNs affected by the transfer of ownership on a date agreed in advance with Publisher A. BIC recommends this date is mutually agreed and communicated in writing to both publishers and 3rd parties involved. With regards Publisher A starting to transmit ONIX messages after this cessation date, BIC advises that careful consideration be given to how long it may take for metadata to flow through the digital supply chain, bearing in mind bank / public holidays and that digital retailers shut down submissions considerably well in advance of 25th December. The release of information date

(particularly in the case of embargoes) can be specified by the acquiring publisher to retailers and aggregators in advance, it does not need to be left to the last minute.

Due consideration should be given by Publisher A regarding pre-orders, reviews, and ratings on 3rd parties' websites.

Step 7: Transfer Completion

It is recommended that Publisher A performs their own checks to the acquired assets in the following key areas:

- Metadata
- Pricing
- Content
- Territories
- Distribution deals
- Co-publications
- Sales rights
- Other issues specific to the business needs of Publisher A arising out of Publisher A's due diligence.

Publisher A should note that any transfer/changing of ISBNs should be executed in accordance with the latest (December 2017) edition of the ISBN Standard.

The link to the page on the International ISBN Agency's website, where the Users' Manual for the latest edition of the ISBN standard can be found, is as follows:

<https://www.isbn-international.org/content/isbn-users-manual>

The link that goes specifically to the new Users' Manual is:

https://www.isbn-international.org/sites/default/files/ISBN%20International%20Users%20Manual%20-%207th%20edition_absolutely_final.docx#

Any content changes (e.g. re-badging, copyright notice, etc.) required by Publisher A to be made as and when necessary, after titles have been transferred to them.

Checklist of Documents Required

Step 1: Publisher to Publisher Information Exchange

1. A full list of all Publisher B's 3rd parties with contact details.
2. A list confirming all associated assets held by each, pertaining only to those ISBNs affected by transfer of ownership. This may be broken down by 3rd parties if appropriate.
3. All asset files from Publisher B including master files – pertaining only to those ISBNs affected by transfer of ownership.

For Step 2: Inform 3rd Parties

1. A complete list, as agreed by Publisher A and Publisher B, detailing all affected ISBNs (by ISBN), all digital formats.
2. Declaration of transfer, on legally acceptable documentation (physical or digital) from Publisher B or Publisher B's authorised representative.
3. Details of key contacts (including those responsible for metadata distribution) at both Publishers A and B.

Step 3: Transfer Sales Reporting

1. Effective date of transfer, details of transition period including explicit information regarding sales reporting and payment instructions especially dates.
2. Bank details of Publisher A for every trading region.
3. Written acknowledgement from 3rd parties regarding receipt of 1 & 2 above.
4. Confirmation from 3rd parties to Publisher A, that the changes regarding sales reporting and payment will be made by them accurately and by the date specified in 1 above.
5. Vendor contracts.
6. Vendor key contact information.
7. Declaration of Transfer document.

Step 4: Transition Period

1. Mutual agreement in writing between Publisher A and B on start and end dates of the transition period.
2. Mutual agreement in writing on what will happen during the transition period with regards updates to content, data, cover images, asset management and records.
3. Transitional Services Agreement – if appropriate.

Step 5: Notice of Transfer

1. Electronic transfer notices from Publisher A to all its 3rd parties.

Step 6: Cessation and Re-Starting of ONIX Messages

1. Agreement in writing between Publisher A and Publisher B regarding the date that Publisher B must cease sending ONIX messages for those ISBNs affected by the transfer of ownership.
2. List of any embargoed ISBNs affected.
3. Publisher A to establish and confirm the best ONIX transmission date and communicate in writing to all its 3rd parties.

Step 7: Transfer Completion

1. List of affected ISBNs in order that Publisher A can perform checks on: Metadata, Pricing, Content, Territories, Sales Rights, Other Issues, prior to resuming transmission of ONIX messages.


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</SupplyDetail>
</ProductSupply>
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This record sent by the divesting publisher (or another organisation acting on their behalf) might not contain all six of the ONIX 3.0 'blocks'. Only blocks 4 and 6 are strictly necessary. However, this would be akin to a 'block update' and not all recipients are able to accept such partial records. In this circumstance, the divesting publisher may need to send a complete record.

How an acquiring publisher should communicate in ONIX the transfer of ownership of product from one publisher to another using <NotificationType>09

<RecordReference>uk.co.abcq.1234567</RecordReference>	Note <i>different</i> reference
<NotificationType>09</NotificationType>	09 = notice of purchase
<RecordSourceType>01</RecordSourceType>	
<RecordSourceName>ABCQ Books</RecordSourceName>	record from divesting party
<ProductIdentifier>	
<ProductIDType>15</ProductIDType>	
<IDValue>9780001234567</IDValue>	product ISBN
</ProductIdentifier>	
...	
<Publisher>	
<PublishingRole>09</PublishingRole>	
<PublisherName>ABCQ Books</PublisherName>	new/acquiring publisher
</Publisher>	
<Publisher>	
<PublishingRole>13</PublishingRole>	
<PublisherName>XYZ Publishers</PublisherName>	former/divesting publisher
</Publisher>	
...	
<PublishingDate>	
<PublishingDateRole>28</PublishingDateRole>	effective date of transfer
<Date>20150105</Date>	
</PublishingDate>	
...	
<ProductSupply>	
<SupplyDetail>	new supplier
...	new returns conditions
<ProductAvailability>20</ProductAvailability>	new availability (e.g. 20 = available)
...	
</SupplyDetail>	
</ProductSupply>	

This record sent by the divesting publisher (or another organisation acting on their behalf) should always be a 'full' record, as it is likely that other details (e.g. marketing collateral) will also have changed.

