



BOOK INDUSTRY COMMUNICATION LTD

BIC Acquisitions & Divestments for Physical Products

Best Practice Guidelines: Scenario 7

Version 1.1
May 2019

© Copyright Book Industry Communication 2019
All Rights Reserved

7 RIDGMOUNT STREET, LONDON WC1E 7AE | +44 (0)20 7255 0516/3
WWW.BIC.ORG.UK | [@BIC1UK](mailto:INFO@BIC.ORG.UK)

Purpose & Scope

This document is designed to offer guidance and advice to publishers and distributors 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 physical books 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 physical products and digital files associated with physical products. The scope of this document relates to one scenario only (please see below). Other scenarios have been documented here:

<https://www.bic.org.uk/209/Acquisitions-and-Divestments-for-Physical-Products/>

Digital products are addressed in a separate document here:

<https://www.bic.org.uk/189/Acquisitions-and-Divestments-for-Digital-Products/>

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



THE BOOK INDUSTRY'S SUPPLY CHAIN ORGANISATION

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.

Publisher C – For the purposes of this document “Publisher C” is the new legal entity resulting from the merger of Publisher A and Publisher B.

3rd Parties – For the purposes of this document, the term “3rd Parties” includes all parties / organisations involved in the Physical 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, sales agencies, retailers, institutions, aggregators, distributors, warehouses, wholesalers and printers.

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.

Physical Product Supply Chain – For the purposes of this document, the term “Physical Product Supply Chain” is used to describe the sequence of events relating to the creation, collection and distribution of 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 it be provided via ONIX 3.0. The term also refers to the physical creation, distribution and sale of the affected product itself.



Scenario 7: Publisher A acquires Publisher B, becoming new legal entity Publisher C and uses completely new distributor

Step 1: Publisher to Publisher Information Exchange [PUBLISHER TASK]

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

Publishers A and B also should liaise with their own distributors to confirm exactly which ISBNs are affected under the agreement.

In addition, Publishers A and B each need to send to Publisher C:

1. A complete, clean and definitive list, as agreed by all parties, detailing all affected ISBNs (by ISBN), all physical products, all physical formats. This list will match exactly the distributor's manifest and should include Out of Print (OP) titles where applicable. BIC recommends that as early as possible, Publisher A, Publisher B and Publisher C should confirm to each other which assets (by ISBN) they understand to be affected under the agreement.
2. A list (by ISBN) confirming which assets held at Publisher A and Publisher B are not affected by transfer of ownership.
3. A full list of all their 3rd parties with details of key contacts.
4. A list, confirming all associated assets by ISBN held by 3rd parties, pertaining only to those ISBNs affected by transfer of ownership.
5. A full ONIX file (or file in pre-agreed (between the publishers) format) of all affected ISBNs so that Publisher C can make an early assessment of the quality of Publisher B's metadata. Publisher C is exposed to enormous risk very late in the process if this is not done at this stage. It assumed that Publisher C is already aware of the quality of Publisher A's metadata as Publisher A is the acquiring Publisher in this scenario.
 - a. Publisher C should also send the same file at the same time to its new distributor for them to assess data quality.
6. All production rights Publisher B holds in all agreed formats affected by the deal. This to be at the works level.

With regards to files received from Publisher B, BIC recommends that Publisher C checks as soon as possible that all received files and marketing images meet current retailer standards, so that all physical products can be made available for sale with major retailers as expected.

7. Production and Inventory Information for all affected ISBNs:
 - i. Confirmation of current stock levels / current inventory
 - ii. Physical locations of stock
 - iii. Details of all outstanding print jobs already commissioned
 - iv. Details of ISBNs (with quantities) currently printing
 - v. Details of ISBNs already shipped from printers (with quantities and destinations)
 - vi. Details of any bulk orders and/or exclusives / back orders
 - vii. Details of any outstanding returns and if using Industry Returns Initiative (IRI)
 - viii. Confirmation and details (metadata, contracts and correspondence draft or otherwise) of all work in progress items including those that are near to contract or contracted



Step 2: 3rd Parties [PUBLISHER TASK]

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 (including Publisher C's new distributor):

1. A complete, clean and definitive list as agreed by Publishers A and B, detailing all affected ISBNs (by ISBN), all physical products, all physical formats, that will fall under the legal ownership of new Publisher C.
2. A complete, clean and definitive list (by ISBN and agreed by both Publisher A and B) confirming which assets held at Publisher B are not affected by transfer of ownership and so will not fall under the legal ownership of Publisher C.
3. Declaration of transfer, on legally acceptable documentation (physical or digital) from Publisher B or Publisher B's authorised representative.
4. Declaration from Publisher A, (or Publisher A's authorised representative), on legally acceptable documentation (physical or digital) of the acquisition of Publisher B and the creation of Publisher C.

If new Publisher C has specific requirements about how the acquired ISBNs should be represented bibliographically in its data feed, now is the time to inform data aggregators. The ISBN standard requires that titles already bearing Publisher A's or Publisher B's ISBNs remain as such until Publisher C reprints using their own ISBNs. Please refer to the International ISBN Agency's User Manual and FAQs here: <https://www.isbn-international.org/content/isbn-users-manual>

Nothing will be changed by any data aggregator or any 3rd party unless actively instructed to do so by Publisher C, providing it complies with the ISBN standard.

Leave no ISBN in limbo: The term “ISBN in limbo” in this context refers to records that neither party feel responsible for and which are therefore not updated / maintained by anyone. It can cause customer service issues for retailers and discovery issues for customers (the “limbo” ISBNs will look available when they are not).

To avoid this happening, new Publisher C is responsible for maintaining and providing accurate availability information for all ISBNs included in the deal, including any that they do not want to keep / make available. These ISBNs (including any that Publisher C does not want to keep / make available) will no longer be the responsibility of Publishers A or B / available from Publisher A or B. With this in mind, BIC recommends the following:

- i. At a mutually agreed time, Publishers A and B need to ensure their own metadata records clearly indicate that these ISBNs are not available from them, but are only available from Publisher C.
- ii. It is vital that Publishers A, B and C agree early on upon the definitive list of ISBNs affected by the deal. At date of transfer, this list should be re-confirmed mutually by Publishers A, B and C with all publishers signing agreement to the list. This list should then be shared with the data aggregators by the new legal entity Publisher C.
- iii. Upon receipt of this list, the data aggregators should sense check this list against their records and highlight any records not included in the list that may have been over-looked to Publishers A, B and C. Publishers A, B and C should resolve this together and feed back to the data aggregators before any further steps are taken.



Step 3: Ordering and Payment [PUBLISHER AND 3RD PARTY TASKS]

Once Publisher C has received the list of Publishers A and B's 3rd parties, their contacts and their signed contracts, Publisher C should contact each of them as appropriate, informing them of the coming change and creation of new legal entity Publisher C, attaching the Declaration of Transfer, and where applicable detailing where/how to place orders, the bank accounts to be used for payment of sales and where to send returns requests, with details of the "effective from" dates for each of these.

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

Due consideration should be given by Publisher C regarding Publishers A and B's pre-orders, and back orders in this regard.

Specific consideration is required regarding returns arrangements and the potential impact on the affected distributors.

Step 4: Transition Period [PUBLISHER TASK]

1. Publishers A, B and C 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.
2. Publisher C should keep in mind that many retailers are buying 3 months or more ahead and so all pre-ordered stock for the affected ISBNs needs to be identified by Publishers A and B and details communicated to Publisher C as early as possible. Given the nature of pre-orders and depending on timings, this exercise will be something that needs to be repeated at certain intervals until the end date is reached in order to capture any new orders.
3. Should a transition period be required, Publishers A, B and C should agree what will happen during the transition period with regards to notifying 3rd parties, updates to marketing collateral, production files, data, cover images, transfer of stock, returns, customer sales history and bibliographic records, to give Publisher C the opportunity to prepare for the creation of new legal entity (Publisher C) and to avoid providing suppliers with conflicting information.
4. Customers should be notified of any change of ISBN to products on order. BIC recommends Publisher C uses the appropriate "replaced by" ONIX fields to help establish links between the original ISBNs and new ISBNs assigned by Publisher C.
5. Consideration should also be given by Publisher C regarding industry wide communication of the creation of the new legal entity Publisher C, the countdown for and implications on returns, with deadlines and clear instructions for where to send both returns requests and authorised returns, prior to and after the deadlines have been reached. This should be in addition to notifying 3rd parties, individually of the same.
6. Publishers A, B and C 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 C.

Step 5: Notice of Transfer [PUBLISHER AND METADATA RECIPIENT TASKS]

At the start of the transition period, on a date mutually agreed between Publishers A, B and C, Publisher C will send accurate and definitive electronic transfer notices to all its 3rd parties / stakeholders in the physical product supply chain, including (but not limited to) Bowker, Nielsen, BDS, PLS and the ISBN Agency. BIC recommends that Publisher C liaises directly with its stakeholders in advance to establish their requirements. Best practice for doing this is to use ONIX 3.0 (Refer to Appendix A below). BIC recommends that an absolute minimum of 10 working days be allowed for this in order for the information to flow through to the necessary places.



Publisher C, should be aware that the Notice of Transfer often has strict dates attached to it – Publisher C may be contractually required to deliver complete and accurate metadata to retail partners on a specific day; Publisher C 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 i) Publisher A and Publisher C ii) Publisher B and Publisher C.

Metadata recipients should adhere to the transfer dates communicated in the ONIX messages.

Step 6: Cessation & Re-Starting of ONIX messages [PUBLISHER TASK]

This step confirms to trading partners which organisation is the owner of which ISBN and from what date that ownership begins.

Publisher A's and Publisher B's distributors (if they use third-party distributors) will need to cease sending ONIX / electronic information for those ISBNs affected by the transfer of legal ownership on a date agreed in advance with Publisher C. BIC recommends this date is mutually agreed and communicated in writing to all publishers and 3rd parties involved.

Timing: With regards Publisher C 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 physical supply chain, bearing in mind bank / public holidays and that retailers shut down submissions considerably well in advance of 25th December. In some instances, this ingestion could take up to 30 calendar days. 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.

Feed authority: It is important to ensure that 3 feeds (one from Publisher C, one from Publisher A and another from Publisher B) are not going out without ensuring that it is 100% clear to all recipients which feed is the authority. Ideally there should be no metadata feed overlap, i.e. the same ISBNs should not appear on more than one feed.

Time should be allowed for data aggregators to review the authority feed for any unexpected changes.

- Impact on data aggregators:

Data aggregators should be notified about all changes (including name, ownership, hierarchy, distribution) in advance. If, on occasion, data aggregators aren't informed prior to receiving the data, this will generate a conflict in their system alerting them that something isn't right. This halts the data processing and requires manual intervention to resolve. At this point the data aggregators will need to contact the supplier of that data for more information. Not informing data aggregators in advance of all changes delays the flow of the new information through the metadata supply chain which has ramifications further down the supply chain.

Due consideration should be given by Publisher C regarding Publishers A and B's pre-orders, and back orders.

Step 7: Transfer of Stock and Price & Availability feeds [DISTRIBUTOR TASK]

On/by the date mutually agreed with Publishers A and B and C, Publisher C's new distributor will need to carry out the following tasks:



THE BOOK INDUSTRY'S SUPPLY CHAIN ORGANISATION

1. Make all necessary changes on their systems in respect of financials, price and availability feeds, back orders etc. pertaining to Publisher C.
2. Ensure it is understood where all Publisher A's and B's stock relating to the ISBNs affected by the deal is coming from and that it is received in time. Depending on how far along the transition by Publisher C to the new distributor is, this stock may be coming direct from Publishers A and B (and/or their 3rd parties) or Publishers A's and B's old/current distributor, or a combination of these.
3. Start sending out the P&A feeds for Publisher C.

On/by the date mutually agreed with Publishers A, B and C, the distributors for Publishers A and B will need to carry out the following tasks:

1. Make any necessary changes on their systems in respect of financials, price and availability feeds, back orders etc. to reflect the new legal situation with regards ownership of Publishers A and B and them becoming part of Publisher C, and that they no longer distribute for Publishers A and/or B.
2. Ensure all stock held by them, relating to the ISBNs affected by the deal is delivered to Publisher C's new distributor. Depending on the size of the acquisition, this will need to be arranged in pre-agreed phases with i) Publishers A, B and C and ii) the distributors for Publishers A, B and C.
3. Cease sending out P&A feeds for Publishers A and B.

Step 8: Transfer Completion

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

- Metadata
 - Check for completeness (including but not limited to cover images, descriptions and other marketing assets)
 - Check for quality
- Pricing
- Condition of physical product
- Territories
- Distribution deals
- Co-publications
- Sales rights
- Special sales
- Other issues specific to the business needs of Publisher C arising out of Publisher C's due diligence (including consideration of GDPR compliance and new titles / contracts that are works in progress)

Publisher C should note that any transfer / changing of ISBNs is to be executed in accordance with ISBN agency rules. The most recent version of the ISBN Users' Manual and Frequently-Asked Questions document can be found here: <https://www.isbn-international.org/content/isbn-users-manual>

Any content changes (e.g. re-badging, copyright notice, jacket changes etc.) required by Publisher C are to be made as and when necessary (most likely upon reprinting), after ownership has been transferred to them.

Publisher C should be mindful of any time limitations on the retention of items previously branded as Publisher B or Publisher A.



THE BOOK INDUSTRY'S SUPPLY CHAIN ORGANISATION

Checklist of Documents Required

Step 1: Publisher to Publisher Information Exchange

1. A full list (by ISBN) of all Publisher B's 3rd parties with contact details.
2. A full and definitive list confirming all associated assets held by each, pertaining only to those ISBNs affected by transfer of ownership. This list should highlight all OP and withdrawn titles if applicable. This list may be broken down by 3rd parties if appropriate.
3. A full and definitive list (by ISBN) agreed by both Publisher A and Publisher B, confirming which assets held at Publisher B are **not** affected by transfer of ownership.
4. All asset files from Publisher B including master files – pertaining only to those ISBNs affected by transfer of ownership.
5. All necessary information relating to work in progress items including new titles / contracts.

Step 2: Inform 3rd Parties

1. A full and definitive list, as agreed by Publisher A and Publisher B, detailing all affected ISBNs (by ISBN), all physical formats.
2. A full and definitive list (by ISBN) confirming which assets held at Publisher B are **not** affected by transfer of ownership.
3. Declaration of transfer, on legally acceptable documentation (physical or digital) from Publisher B or Publisher B's authorised representative.
4. Details of key contacts (including those responsible for metadata distribution) at both Publishers A and B.
5. Declaration from Publisher A, (or Publisher A's authorised representative), on legally acceptable documentation (physical or digital) of the acquisition of Publisher B and the creation of Publisher C.

Step 3: Ordering and Payment

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 – to be handled within GDPR compliance guidelines (if applicable).
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. Publisher B's signed 3rd party contracts.
6. Publisher B's 3rd party 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 agreed between Publishers A and B.

Step 5: Notice of Transfer

1. Transfer notices from Publisher A/C to all its 3rd parties.



Step 6: Cessation and Re-Starting of ONIX Messages

1. Agreement in writing between Publisher A/C 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/C to establish and confirm the best ONIX transmission date and communicate in writing to all its 3rd parties.
4. Details of pre-orders and back orders.

Step 7: Transfer of Stock and Price & Availability feeds

1. A detailed list for Publisher C's new distributor of the quantities of stock for each ISBN affected by the deal and their source (e.g. Publisher B's distributor, or Publisher A's current/distributor, other 3rd parties etc.).

Step 8: Transfer Completion

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

Other Scenarios

Other scenarios documented by BIC with regards acquisitions and divestments in the physical supply chain are as follows:

Scenario 1 – Publisher A purchases part/all of Publisher B and publisher A's distributor is used for all.

Scenario 2 – Publisher A acquires part/all of Publisher B and both Publisher A's and Publisher B's distributors are used (i.e. there is no immediate change to distribution).

Scenario 3 – Publisher A acquires part/all of Publisher B and uses a completely new distributor as a change in distribution is already in progress at Publisher A.

Scenario 4 – Publisher A acquires Publisher B, becoming new legal entity Publisher C and uses Publisher A's distributor.

Scenario 5 – Publisher A acquires Publisher B, becoming new legal entity Publisher C and uses Publisher B's distributor.

Scenario 6 – Publisher A acquires Publisher B, becoming new legal entity C. Both Publisher A's and Publisher B's distributors used (i.e. there is no immediate change to distribution).

Scenario 8 – Publisher A acquires Publisher B, becoming new legal entity Publisher C. Publisher A and Publisher B already use the same distributor (i.e. there is no immediate change to distribution).

Scenario 9 – Publisher changes distributor.

See the following link for further information regarding these scenarios:

<https://www.bic.org.uk/209/Acquisitions-and-Divestments-for-Physical-Products/>



Appendix A

How to use Transfer Notices in ONIX 3.0

ONIX has had the ability to provide notification of product transfers since 2003 as follows:

- notice of sale from divesting party
- notice of acquisition from acquiring party

To do this, ONIX uses <NotificationType> 08 and 09 in List 1

- The message should include date, any change of distribution arrangements, terms, and prices.
- On their own these notifications are not sufficient with regards best practice for the Acquisitions and Divestments process. Please refer to the additional steps/tasks required as detailed in the main documentation.

How a divesting publisher should communicate in ONIX the transfer of ownership of product from one publisher to another using <NotificationType>08

```
<RecordReference>f3a85abd-f29e-4e0b-92cc-2fa6a0833022</RecordReference>
<NotificationType>08</NotificationType> 08 = notice of sale
<RecordSourceType>01</RecordSourceType>
<RecordSourceName>XYZ Publishers</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>
...
...
<ProductAvailability>52</ProductAvailability> old supplier
...
...
no longer sells in this market
last date for returns
```



```
</SupplyDetail>
</ProductSupply>
```

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 different 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>
...
<ProductAvailability>20</ProductAvailability> new supplier
...
</SupplyDetail>
</ProductSupply> new returns conditions
new availability (e.g. 20 = available)
```

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.

