



INTERNATIONAL ASSOCIATION OF SCIENTIFIC, TECHNICAL & MEDICAL PUBLISHERS

The Hague, 17 November 2008

To: Dr. Tilman Lüder, Head, Copyright Unit
Directorate-General Internal Market
European Commission
Brussels, Belgium
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**STM submission on the Green Paper
"Copyright in the Knowledge Economy"**

The International Association of Scientific, Technical and Medical Publishers ("STM") comprises approximately 100 publishers of journals and reference works, based in 26 countries, including in many Member States of the European Union. EU-based publishers publish 49% of all research articles worldwide (STM's members may originate approximately 2/3 thereof), employing 36,000 staff directly and another 10-20,000 indirectly, and make an Euro 3 billion contribution to the EU's balance of trade. Apart from publishing in print, STM publishers originate and disseminate online, books, journals databases and individual articles and contributions of a multitude of European and international scientific, medical and technical authors and scholars. This creative content is available widely in electronic and in print form for access by individuals, whether through academic and corporate libraries or directly, for use in research, education, in industry the professions and business.

STM welcomes this opportunity to make its submission as part of the call for comments and answers set out in the above-mentioned Green Paper, Copyright in the Knowledge Economy (the "Green Paper").

STM's submission is composed of two parts:

- A. STM Position on Copyright in the Knowledge Economy; and
- B. STM answers to the specific questions raised in the Green Paper (including Annex I – examples of successful licensing schemes).

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Mabe", with a long horizontal flourish extending to the right.

Michael Mabe,
Chief Executive Officer

Cc: Federation of European Publishers
International Federation of Reproduction Rights Organisations

STM SUBMISSION ON COPYRIGHT IN THE KNOWLEDGE ECONOMY

A. STM Position on Copyright in the Knowledge Economy

1. The Role of STM Publishers

Society benefits from the pursuit, distribution, preservation and usage of scientific discovery and knowledge. Scientific, technical and medical (STM) publishers are trusted partners in this endeavour and an indispensable link in the chain of creating, registering, certifying, formalising, improving, disseminating, preserving and using scientific information. STM publishers continue to make long term investments in publications and information services around which emerging and established scientific communities coalesce and evolve.¹

STM publishers have embraced the electronic and networked world and invested heavily in it. Over 90% of journals are available online today, and publishers are retro-digitising journals published in the print environment, often back to issue one volume one (in some cases going back 100 years). The result is that such content is more accessible and more widely used online today, and is also being cross-referenced with the constant stream of new knowledge that research communities generate.

STM publishers already do provide online access to their catalogues as it is their main method of disseminating and providing access to their customers. Online STM publications and information services to a large extent define what STM publishers do and are absolutely core to their mission and existence.

The e-book market for academic and educational titles has been growing rapidly, particularly in the last couple of years. Publishing and providing access to e-books online and offline constitutes another core market area

¹ An Overview of Scientific, Medical and Technical Publishing and the Value it Adds to Research Outputs, April 2008, International STM Association, The Hague/Oxford, p.3.

for STM publishers. Many are retro-digitising their backlists in a fashion similar to that which has already been done in the journal market.

The e-Revolution of STM publishing commenced long ago, but accelerated exponentially beginning in the late 1990's. It has transformed not just how a scientific discovery is described, registered, certified, disseminated and preserved for posterity, but also the methods and procedures used in such registration and dissemination. Today, STM publishers offer not just entire books and entire journal issues for purchase and access online, but also chapter of books, individual elaborate illustrations (eg anatomical charts) and individual journal articles.

STM publishers invested heavily very early in digital content, and they continue to invest in developing new tools and knowledge management techniques that will make research output ever more rapidly accessible for research and education (whether in traditional educational establishments or distance learning institutions).

STM publishers' innovations are not confined to tools and technology. They continue to refine traditional business models which centre around a mix of sales, pay-per-view and subscriptions coupled, where appropriate, with suitable Digital Rights Management (DRM). STM publishers also invent and experiment and compete with new business models to disseminate content; open access and hybrid forms between subscriptions and author-pays/grantor pays models are some examples.

Licensing practices and business models with respect to content and value have also rapidly evolved, with licenses for "core" content, discounted access to "non-core" content, and access to individual journal articles and book chapters and other small book contributions. The evolution of business models has resulted from negotiation and interaction with institutional customers, in some cases consortia and national entities.

The development of online versions of scientific journals has led to greatly increased access to the scientific literature at greatly reduced cost per use.² Evidence has been cited in a 2006 study that the "number of journals acquired per library has increased dramatically since the late 1990's [...] for example the number of current serials subscribed per

² An Overview of Scientific, Medical and Technical Publishing and the Value it Adds to Research Outputs, April 2008, International STM Association, The Hague/Oxford, p. 9.

higher education institutions in the UK has more than doubled in the past ten years [...].”³

2. Publishers and Copyright in the Information Society and Knowledge Economy

The dynamic market described under paragraph 1 above, and its rapid evolution, illustrates the power of a market-place orientation with intense competition and innovation, which has resulted in more access in a more immediate way to more users than at any time in scholarly history. STM publishers have been, and continue to be, at the core of this development and society. The research community have been served enormously by the wide availability of scholarly communications and stands to benefit even more in the future.

However, one essential pre-condition for STM publishers’ continued investment and innovation is a sound intellectual property framework, including up-to-date copyright legislation, as well as adequate and effective enforcement.

Copyright legislation must allow publishers to obtain the necessary rights from contributors to publications (such as authors, illustrators and designers) and those rights must be robust enough to allow publishers the exclusive use of the copyright-protected content in all relevant media (online, electronic, print, micro-fiche etc). Moreover, the copyright system must permit publishers to enforce these rights against third-parties who intend to free-ride or otherwise illegally avail themselves of the publishers’ content, or indeed to develop additional or competing services on the back of the publishers’ added value.

Unlike in the analogue world, in the Information Society and Knowledge Economy, publishers are able to contract directly with users (through the license or access agreement) and also to provide access to their customers (be they for profit or non-profit organizations, or private individuals) online. To the extent that such licensing agreements are enforceable, they represent another indispensable tool to do business in the Knowledge Economy.

³ Mark Ware, *Scholarly Publishing in Transition*, September 2006, White Paper, a study supported by STM, and ALPSP, p. 15.

Copyright and licensing through contractual arrangements are thus key ingredients for the Knowledge Economy. Licensing in particular has the advantage of remaining customisable, flexible and adaptable over time and at short notice. Licensing, when coupled with the provision of access to users, achieves more elegantly, swiftly and sustainably many of the purposes served in the past by copyright exceptions. It is no doubt for this reason that the interaction, specifically between copyright exceptions (*and limitations*, see below) and licensing arrangements is one of the key topics on which the Green Paper seeks to foster a debate.

Licensing contracts also deal with matters that exceptions do not and cannot address, such as service-provider warranties and precisely defined usage rights. Negotiated usage rights create legal and business certainties between the parties, often obviating the need to agree on the precise scope of a legal exception. Service-provider warranties guarantee specific access levels and the integrity and true source of information. These elements form part of a trusted environment in which users are confident to access quality-controlled content smoothly and free from restrictions.

Because of their experience with the electronic world, STM publishers have valuable input and wish to contribute to this debate, *inter alia*, by making this submission.

3. Licensing⁴ and Copyright Exceptions and Limitations⁵ in the Knowledge Economy

There are few copyright exceptions and limitations specific to education and research in the digital environment.⁶ They are “exceptions” for a good

⁴ STM supports direct voluntary rights-holder licensing and permission-granting, and voluntary collective efforts as well. Mandatory collective licences should be considered only in the most rare and circumscribed circumstances where voluntary collective solutions would be impossible to organise administratively.

⁵ Although the Green Paper uses the term “copyright exception(s)” throughout, for purposes of this submission, STM distinguishes between those activities that could be an “exception” to relevant copyright law, with no requirement for direct rights-holder authorisations or collective licences (whether voluntary or mandatory), and those activities that are suitable for a “limitation”, areas of use that have more of a potential to impact the market for STM materials and thus require direct authorisation or a collective licence approach.

⁶ See STM Position on Digital Exceptions and Limitations and the Overview Comparison of Digital Copyright Exceptions and Limitations in a separate Annex, June 2008, <http://www.stm-assoc.org/documents-statements-public-co>.

reason. The market for scientific and educational content is best placed to drive growth, increase knowledge and the smooth circulation of content embodying such knowledge. Exceptions and limitations erode the market and discourage investment and innovation.

STM publishers are aware of the information needs of researchers and educators, the general contributions that such scholars make towards society and the role that specialised libraries play in the dissemination of knowledge. STM publishers recognise the need for balance, but believe that balance is in most cases best achieved through licensing arrangements rather than exceptions.

At the same time, STM recognises that some exceptions and limitations remain relevant in the digital environment and STM supports certain licensing arrangements as well as exceptions and limitations specifically referred to in Part B of this submission, ie as part of STM's answers to specific questions contained in the Green Paper. STM believes that the key principles below, if carefully applied, will prevent erosion or interference with the market for scholarly communication and that preserving this market is essential for a thriving Knowledge Economy in Europe.

- **Berne Convention three-step test must be respected**

Any possible revision of existing exceptions or introduction of future exceptions or limitations must be developed in the context of the Berne Convention's 3-step test⁷, which requires that any exception or limitation must be confined to a certain special case that does not interfere with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the rights-holder.

- **Special markets and the methods by which they are served by specialised right holders must not be eroded by exceptions or limitations that are overly broad or vaguely defined**

Some state that because education and research are in the public interest, they constitute a "certain special case" on which any copyright exception is premised (the first step under the Berne Convention). Moreover, the

⁷ Art. 5(5) Directive 2001/29, Art. 9(2) Berne Convention, Art. 13 Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS), Art. 10 WIPO Copyright Treaty (WCT).

presumed non-commercial nature of many educational and research activities is frequently cited as a strong indicator that the use should be legitimised under an exception. Thus, it is often rather too generally assumed that education and research uses do not “interfere with the normal exploitation”, ie the market, of the rights-holder (the second step), or that such use is not “unreasonably prejudicial” to his/her interests (the third step).

STM materials are prepared specifically for education and research (*their target market*), and they do not, therefore, constitute a “certain special case” (1st step under Berne Convention). Any unqualified exception that included all STM materials would also interfere with the normal exploitation of the work (2nd step under the Berne Convention). By way of example, the teaching exception should not apply to works intended primarily for teaching purposes, as that would conflict with their normal exploitation.⁸ For the same reason, a research exception should not primarily apply to works intended primarily for researchers.

The public interest of research and education is best served by encouraging the creation of new publications and information services with research and education audiences (and markets) in mind. For example, journal articles, academic treatises and textbooks are published by STM publishers for the very purpose of contributing to scholarly communication and education. Libraries for non-commercial research or non-commercial educational institutions are the primary purchasers of, or licensees for, STM publisher materials and services. Offering publications and information services to these non-commercial communities, such as by way of subscription or individual journal article supply, is the very essence of “normal exploitation”. This must be left free of exceptions that prejudice the legitimate interests of rights-holders unreasonably.⁹

Clearly, any exceptions and limitations for education and research dealing with STM materials would need careful drafting to minimise any potential distortion of this vital and well-functioning system for scholarly communication.

⁸ Raquel Xalabarder, *Copyright and Digital Distance Education: The Use of Pre-Existing Works in Distance Education Through the Internet*, The Columbia Journal of Law & the Arts, Vol.26, No. 2, Spring 2003, pp 101-178, at p 175.

⁹ STM publishers are also actively engaged with other agents and distributors to distribute or provide access to or copies of such materials.

- **Licensing is the “smart” route to providing access to knowledge and preferred over exceptions and limitations**

In the 21st century, licensing is the preferred mechanism to widen access to knowledge that serves specialised markets. Negotiation between users and rights-holders, in the context of competitive business models and options, achieve the targeted aims and needs of both parties, and enable publishers to make adjustments to the offers and options they provide to the market.

Where exceptions and limitations are introduced, they need to leave room for licensing solutions and negotiation. Recognising this, a number of copyright laws with digital exceptions and limitations pertaining to research and education *exclude* STM materials designed for such markets, i.e. provide for a specific "exception from a more general exception", as one of a number of qualifiers to the exception or limitation.¹⁰

- **Exception and limitation must take account of the increased risk of digital dissemination**

Further, any exception or limitation newly introduced would also fully need to take into account the amplified risks of the digital environment (in this sense, “digital is different”).¹¹ The ease of digital reproduction and dissemination through the Internet have greatly increased the prejudice and damage that infringements cause to right holders. Pursuing digital infringers legally presents all sorts of increased challenges, including crossborder litigation, working with frequently passive Internet Service Providers, investigating the often concealed identity and location of infringers, and dealing with highly organized and fluid infringers who quickly adapt and change their operations and location.

- **Exceptions and limitations must take into account cultural diversity and legal traditions**

Finally, it must also be recognised that different circumstances will apply in different countries, consistent with local legal traditions and experience.

¹⁰ See, for instance, Article 122(5)(e) of the French Intellectual Property Code; §32(2) of the Spanish Copyright Act; also, in relation to school books, §52a of the German Copyright Act.

¹¹ In this regard, see also Recital (44) of the Directive.

Thus, for instance, the introduction of a “fair use” open-ended exception or the transplanting of one aspect of many aspects of the US-based “fair use” jurisprudence, the so-called transformative use, (if proposed) would not be viable in the absence of a single copyright court, a unified common law tradition and adherence to judicial precedents throughout the whole of the European Union.

Respectfully submitted

For and on behalf of the International STM Association

17 November 2008

B. STM Answers to Specific Questions in the Green Paper

1. Preliminary Remark

STM's Answers are based on the principles stated in Part A of this submission, repeated here for ease of reference:

- **Berne Convention Three-Step Test must be respected¹²**
- **Special markets and the mechanisms by which they are served by specialised right holders must not be eroded by exceptions or limitations that are overly broad or vaguely defined**
- **Licensing is the "smart" route to providing access to knowledge and preferred over exceptions and limitations**
- **Exception and limitation must take account of the increased risk of digital dissemination**
- **Exceptions and limitations must take into account cultural diversity and legal traditions**

2. Answers to Questions contained in the Green Paper

(1) Should there be encouragement or guidelines for contractual arrangements between right holders and users for the implementation of copyright exceptions?

STM publishers are in a constant dialogue with users. Learning and listening to user and customer concerns and needs, and intensive negotiations led by representatives with keen understanding of their needs, concerns and objectives, has led to the development of the many licensing options offered by STM publishers today. STM is not convinced that government-sanctioned or government-sponsored guidelines would be necessary or desirable in all instances or for all markets. In any case, a

¹² Art. 5(5) Directive 2001/29, Art. 9(2) Berne Convention, Art. 13 TRIPS, Art. 10 WIPO Copyright Treaty (WCT). We note that the Green Paper does not refer to the WCT. STM believes that the WCT is part of the "state-of-the-art" global copyright framework.

sector-by-sector approach would have to be pursued, as illustrated by the Recommendations and Memorandum of Understanding (MoU) on orphan works (see answers to questions (10), (11) and (12) further below).

On the other hand, encouragement in the form of information exchange between Member States and the EU on how to draft exceptions in a way that achieves their intended purpose and leaves room for contractual arrangements would be highly desirable.

The non-mandatory list of copyright exceptions contained in the Directive on Copyright in the Information Society 2001/29 (the "Directive") has been implemented by Member States into national law. The Green Paper rightly points out that Member States enjoy a great deal of flexibility in implementing exceptions contained in the Directive.

However, on the inter-relationship between contractual relations and exceptions, recital 45 of the Directive instructs Member States as follows:

"the exceptions and limitations referred to in Article 5(2), (3) and (4) [of the Directive] should not, however, prevent the definition of contractual relations designed to ensure fair compensation for the rightholders insofar as permitted by national law."

Moreover, recital (35) mentions that a licence fee may include fair compensation due to right holders under certain cases of exceptions or limitations. Recital (35) too, therefore, points to the possibility of implementing an exception or limitation by contract.

Thus, the possibility created by the Directive to combine contractual solutions and exceptions offers some of the most exciting options for win-win arrangements between right holders and users. Contractual solutions are flexible and adaptable and are, thus, preferable to inflexible legal exceptions which are hard to change over time.

Moreover, exceptions are a shield, not a sword, in the sense that they limit the liability of the user for certain activities, but exceptions do not contain rules providing access to copyright-protected content. It follows that contractual arrangements are able to complement exceptions, not only to shield consumers from liability when they use a particular work, but to provide legal access to a work in the first place.

In relation to some exceptions, some national laws provide that an exception is only available if a licensing scheme is not in place, or if a copyright-protected work is not made available in any form, or not made available electronically, by the right holder (eg Regulations to the UK Copyright, Patents and Designs Act of 1988, or §53a of the German Copyright Act). Exceptions drafted in this fashion contain a dynamic element; they offer in themselves the necessary encouragement and guideline for contractual arrangements to emerge between right holders and users. Where right holders and users make use of the opportunity to regulate their affairs by contract, they are often empowered to delineate the application of an exception or to avoid its application altogether in return for a more customized and sustainable solution.

(2) Should there be encouragement, guidelines or model licenses for contractual arrangements between right holders and users on other aspects not covered by copyright exceptions?

Copyright exceptions may be considered where there is in essence a proven market failure. In the dynamic STM field, a wide variety of sample agreements and guidelines exist between right holders and users. Both right holders and users are dynamic groups that are used to contractual arrangements and negotiation. Encouragement from the EU and/or individual Member States would certainly be welcome, especially where this helps to avoid the need for an exception.

A code of conduct could be particularly useful in relation to combating piracy on the Internet, especially if it also involved Internet Service Providers and telecommunication organisations.¹³

Areas where government-sponsored initiatives may also be useful could include long-term preservation issues, access to out-of-copyright works and accessibility and preservation of raw data research results.

(3) Is an approach based on a list of non-mandatory exceptions adequate in the light of evolving Internet technologies and the prevalent economic and social expectations?

¹³ Compare for instance the initiative by Denis Olivennes to reduce Internet piracy which suggests to enlist the help of Internet Service Providers; See also the Albanel Bill in France on the same subject.

Historically, the approach based on a list of non-mandatory exceptions was chosen because very few Member States were willing to reconsider existing exceptions, and only a few Member States were willing to implement exceptions unknown to them. Thus, to some extent the list of non-mandatory exceptions reflects the diversity of the EU's cultural landscape with different preferences and traditions.

For as long as copyright law remains the national domain of Member States, and is not codified at EU level, a list of non-mandatory exceptions provides at least some legal certainty to right holders; a reassurance that their investment in the creation and dissemination of works of the mind will not be taken away or frustrated arbitrarily in any one of the EU Member States.

Naturally, right holders would prefer a smaller list of exceptions and greater legal certainty. However, given Europe's cultural diversity, the list of non-mandatory exceptions was perhaps the only achievable solution.

STM notes that the market for scholarly content, its rapid evolution to online and electronic solutions, and the significant increase in access through market innovation, is evidence that the current approaches to non-mandatory exceptions are working.

(4) Should certain categories of exceptions be made mandatory to ensure more legal certainty and better protection of beneficiaries of exceptions?

Mandating of exceptions would not lead to greater legal certainty, as Member States would retain a great deal of flexibility around implementation. Different exceptions are of differing importance in different Member States. See also response to question (3) above.

(5) If so, which ones?

See response to questions (3) and (4).

(6) Should the exception for libraries and archives remain unchanged because publishers themselves will develop online access to their catalogues?

STM publishers already provide a rich online environment for research, with databases, e-journal and e-book content, embedded indexing, linking between references and content, and much more "Providing online access to catalogues" is not something STM publishers intend to do in the future: it is already one of our main method of distribution and providing access. STM publishers have invested heavily, and they continue to invest, in such products and services.

In the case of journal articles, digitization and offering "born digital" content commenced in the mid 1990's. Today over 90% of journal articles are available for digital download from publishers' websites or their licensees. As time goes by, it is reasonable to expect a digitization rate moving even closer to a 100%.

In the case of books, digitization is fast progressing and e-book catalogues of STM publishers are rapidly increasing. There is no need, therefore, to expand exceptions. In fact, exceptions may be counter-productive and frustrate large investments in further digitization, the development of innovative platforms and tools, and cannot anticipate the changing environment of a dynamic marketplace or the changes in researcher and customer needs.

As the EU should adopt a forward-looking approach, it must be emphasized that the process of innovation is never complete and hurtling forward very fast. The e-book market is still developing at this stage: Web 2.0 and data mining are the new frontiers. Exceptions destroying or limiting the development of these innovative markets would be counter-productive for the Knowledge Economy and consequently for the EU as a whole.

The traditional underlying reason for library copying exceptions has been that, in an environment dependent on print production and distribution, a given library would not necessarily subscribe to or purchase all relevant materials, but would rely instead on the collections of other institutions (perhaps more specialized institutions) to fulfill the library's patrons' needs. This would apply in particular to materials not deemed to be central or essential for that particular library's collection. It is understood in most jurisdictions where this legal and procedural tradition has developed for such "lending-and-borrowing", that an essential issue would

be to ensure that such lending-and-borrowing should not be likely to substitute potential purchase of such material.

We note that, as described above, and with the advent of the Internet and STM publisher's innovations, the availability of digital STM content is ubiquitous in a world that is by now close to borderless. Moreover, STM journal content is now not only available to potential journal subscribers, but to everyone: individual articles are instantly and globally available for purchase and access, and similar initiatives are occurring with respect to e-books and databases. Our view is that the rationale for permitting interlibrary copying and supply is thus much reduced, almost to the point of being irrelevant, in the digital environment.

STM does accept that there may be a scholarly need for a non-commercial and educational library to make a digital copy of unique and rare scholarly material for another non-commercial and educational institution, but for in-copyright works this must be limited to material which is not commercially available in the geographic territory of the "requesting" institution. Such copying cannot be done systematically for the purpose of substituting for the normal purchase or licence of STM material (including the supply of individual journal articles) for the requesting library's collection. Libraries should be obliged to keep records of materials copied for such purposes and their requests from other libraries for such copies.

(7) In order to increase access to works, should publicly accessible libraries, educational establishments, museums and archives enter into licensing schemes with the publishers? Are there examples of successful licensing schemes for online access to library collections?

Individually-tailored licensing agreements have become essential for libraries, educational institution archives, museums, and the publishers and information providers that serve these markets.

Under subscription agreements, libraries, often negotiating as part of a larger library consortium, gain access to a broad assortment of e-journal and e-book content. As more and more content is accessed in this way, the price per accessible or downloaded content has been falling. Licensing arrangements include fixed fee subscription agreements and also the purchase of vouchers (sometimes referred to as "tokens") which represent a degree of pre-paid access to content not currently subscribed to, but

available on an as-needed basis. Access is being provided to traditional collections, discounted access to less-used and less-subscribed-to content, and to individual articles and book chapters.

There are numerous examples of licensing deals and models. The market is thriving in many EU Member States. Licensing of STM content takes place often in the context of a library consortium negotiating access on behalf of a number of libraries. Some of these consortia are in fact “country deals” encompassing virtually all libraries in a particular EU Member State.

In Germany, the Federal Government has joined negotiations for so-called “National-Lizenzen” (“national licences”, see www.nationallizenzen.de). Under these licences, backfiles to numerous journal collections are available country-wide and also remotely to members or patrons of participating libraries. Other EU Member States also encourage country-wide solutions.

Knowledge Exchange (KE) is a partnership between Danish, Dutch, German, and UK organizations that have co-signed a multinational framework agreement with five different publishing houses for 5 years as a pilot. One aspect to be tested is the potential for savings as discounts on pricing are based on levels of take up from each partner country. Discounts are negotiated with publishers so that the greater the number of subscribers across the partner countries, the greater the savings.

Publishers also offer articles for individual download, either as “pay-per-view” from their own websites or through licensees, including libraries and commercial organisations. At least where content is made available in this way by publishers, exceptions and limitations must recede, as illustrated by the recent adoption of section 53a of the German Copyright Act. STM publishers have made good use of this provision by entering into document delivery licensing agreements with Berlin-based Subito e.V (www.subito-doc.de). Subito e.V. is in fact licensed by a great number of STM publishers to supply individual articles not just within Germany, but throughout Europe and beyond. The individually negotiated tariffs do take account of different market segments through differential pricing. Other major libraries that either have entered into document delivery agreements with publishers or are currently considering to do so, include the British Library (UK), TU Delft (Netherlands), and INIST-CNRS (France).

Other libraries are in the process of signing document delivery deals with publishers under which they are permitted to supply customers with documents under licence.

For more details on the above-mentioned examples of successful licensing schemes, we kindly refer you to Annex I hereto.

(8) Should the scope of the exception for publicly accessible libraries, educational establishments, museums and archives be clarified with respect to:

(a) Format shifting;

(b) The number of copies that can be made under the exception;

(c) The scanning of entire collections held by libraries.

Regarding Question (8)(a) and (b) "format shifting and number of legitimate copies":

Libraries for non-commercial research or educational institutions should be able to create and use a digitized archival copy to replace lost or damaged originals in the public or "circulating" collection of the institution (or in restricted collections for scholarly use), if new originals or authorised copies are not available commercially or if the library cannot obtain access to an archival copy through the mechanisms identified in their licence or subscription access agreements.

Many STM publishers provide for archiving in their licence or subscription access agreements.

Libraries should also be able to "refresh" the archive by creating new digital copies from time to time (to accommodate technological changes in areas such as formatting or digital storage requirements). More than one copy at a time can be made as necessary to ensure that replacement archival copies can be made in the future.

This exception should be limited to archival replacement and should not be used for the creation of further copies or generally for access outside the institutions' user community. As the Information Society directive noted in preamble 40, "(s)uch an exception or limitation should not cover uses made in the context of online delivery of protected works" as this would implicate the current and future development of the digital market.

Regarding Question (8)(c) "scanning of entire collections by libraries":

As explained above, large percentages of STM content are in fact available electronically which technically obviates the need to scan (and more is becoming available day by day). Scanning of copyright –protected works requires the prior consent of the rights holder.

Similar to the efforts relating to orphan works, for copyright works which are out-of-print, a set of tools, including two sample licensing agreements for the digitisation and making available of out-of-print works, have been developed by the copyright subgroup of the i2010 High Level Expert Group (HLEG) of the EC i2010 digital libraries initiative. The model licensing agreements have been worked out by teams made up of representatives from the library, author, publisher and RRO communities, and have been endorsed by the archives and museums representatives in the copyright subgroup and the HLEG. They address the offering of access to out-of-print books in libraries over open networks; and to copyright works by cultural institutions to authorised users in secure networks. Having been developed and agreed by the relevant stakeholders, these licensing schemes are in themselves successful schemes yet to be deployed.

A particular issue for libraries may be the digitization of unpublished manuscripts and "grey literature". Under many copyright laws, unpublished manuscripts that are still in copyright are especially protected from reproduction, including digital reproduction. STM sees no need to change the basic premise that every author should have the unquestioned right to decide when, where and how his or her work is released to the public for the very first time. Where a library cannot locate the author of an unpublished manuscript, the recommendations on orphan works may provide a measure of relief (see further below, answers to questions (10), (11) and (12)).

(9) Should the law be clarified with respect to whether the scanning of works held in libraries for the purpose of making their content searchable on the Internet goes beyond the scope of current exceptions to copyright?

STM believes the law to be sufficiently clear. The said use would exceed any copyright exception acceptable under Art. 5(5) of the Directive. STM therefore sees no need to clarify any exception.

STM's position is that rights holders must always be consulted about any projects that involve their works and permissions must be sought and obtained. Publishers are actively working with libraries in the EU, including the Royal Library of the Netherlands on long-term electronic archiving and preservation projects (see <http://www.kb.nl/dnp/e-depot/e-depot-en.html>). Many publishers actively work to enable published content and library collections to be indexed on the Internet. Publishers and other stakeholders in Europe have invested in collective or individual initiatives and should continue to have the liberty to do so. Among the collective initiatives include *Libreka* in Germany, *Gallica2* in France and *eBog* in Denmark. These advanced solutions should be taken into account when developing solutions. Individual efforts by publishers include many back-file digitisation efforts by STM publishers and, for instance, Macmillan Publishing Service in the UK. Outside the EU, Media 24, runs a large voluntary digitisation programme also available to EU-based publishers.

At EU level the i2010 Digital Libraries Programme has already yielded sample licences for digitising out-of-print books and for making them available either on an electronic secure network (eg Intranet) or over the web. We hold the view that the industry positions, EC MoU, and recommendations and Guidelines developed and endorsed under the i2010 Digital Libraries Programme in which STM has actively participated provide a working solution to making out-of-print works available

Moreover, for content made available by STM publishers there is no real need to make such content searchable and it is easy to locate a source for the content too – most publishers offer the content world-wide from their websites. STM publishers' content is generally also easily discoverable on the Internet through the publishers themselves or through various abstracting¹⁴ or indexing services (in the industry also known as "A&I services") and Internet search engines (including those organized and provided by publishers themselves).

¹⁴ "Abstracts" are succinct summaries of scientific, technical or medical articles and research contributions.

(10) Is a further Community statutory instrument required to deal with the problem of orphan works, which goes beyond the Commission Recommendation 2006/585/EC of 24 August 2006?

STM publishing, like other segments of the publishing industry have developed a relatively sophisticated permissions' system that affords users (which here includes authors, fellow publishers and other users) the possibility to seek authorization for the re-use of extracts from publications in the creation of new works. To publishers and authors as right holders the permissions system is important, as the right to be identified as author and publisher and to be associated with a particular use or project by granting permission enables the author-creator and the publisher to support, or not, a particular use or project. Moreover, the permissions' system enables to set terms and conditions of re-use.

STM has developed a Position on Orphan Works in December 2006, followed by a Position Paper in November 2007 on a "Safe Harbour", providing some guidelines as to what constitutes a "diligent search" in relation to a potentially orphaned work.

In June 2008, STM, together with 24 other stakeholder organisations, signed a Memorandum of Understanding on Diligent Search Guidelines for Orphan Works. This complements a declaration subscribed to by a growing list of STM members outlining their position in case of use of orphan works in the field of scientific, medical and technical literature. These documents are available on the STM web site:

- o STM Position on Orphan Works (December 2006);
- o STM/ALPSP/PSP Position On Use of Orphan Works in Scientific, Medical and Technical Literature (November 2007); and
- o Press Release MoU on EU Diligent Search Guidelines For Orphan Works.

It has been suggested that the need for a "diligent search" may be obviated in the case of so-called "mass-digitisation" exercises. STM remains of the view that whilst users and rights-holders should collaborate in an effort to streamline and facilitate diligent searching, there is no substitute for a diligent search even, perhaps especially, in cases of mass-digitisation.

STM has actively participated in the High-Level Group of Experts on the i2010 Digital Library. The MoU, recommendations and Guidelines developed and endorsed under that Programme are sufficient for present purposes.

(11) If so, should this be done by amending the 2001 Directive on Copyright in the information society or through a stand-alone instrument?

As explained in STM's answer under 10, there is no need to change the Directive or legislate in some other fashion. Should the Commission come to a different conclusion, then STM would strongly be in favour of a stand-alone instrument. The reason for this is that the issue of orphan works is not a question of exceptions or exclusive rights, but a rights clearance mechanism in the form of guidelines how to clear rights responsibly.

(12) How should the cross-border aspects of the orphan works issue be tackled to ensure EU-wide recognition of the solutions adopted in different Member States?

STM believes that the key to solve the orphan works problem lies in sector by sector adoption of diligent search criteria. Criteria must be developed at the sector level as the information and its relative significance will best be understood at this level by reasonably experienced practitioners. As long as these are adhered to EU-wide, there is no problem with recognizing a search as "diligent" across the EU.

From a rights holder perspective, the real issue of orphan works is actually an issue of "works erroneously believed to be or treated as orphans". In the end, it is all about diligent searching, which will always entail a search of available information in the country of origin of the work (country of publication) and possibly the country (or countries) of residence or citizenship of the author(s) of the work in question.

STM would not be in favour of a registration system, where works presumed to be orphans, are listed and become available for the taking by interested users. In STM's view this would be a violation of Article 5 of the Berne Convention, which prohibits the introduction of formalities as pre-conditions of copyright protection. STM also believes that such a system would set a dangerous precedent internationally and, if emulated abroad,

could pose a serious threat to European works (eg “presumed orphaned” in China or Russia).

(13) Should people with a disability enter into licensing schemes with the publishers in order to increase their access to works? If so, what types of licensing would be most suitable? Are there already licensing schemes in place to increase access to works for the disabled people?

Licensing schemes for persons with visual or print disabilities are common throughout the EU, having been negotiated and implemented with common goals and understandings on the part of both user organizations and rights holders. We support the careful and thoughtful analysis of the special needs of visually impaired and print disabled persons and STM publishers are willing actively to participate in discussions on how access to protected works could best be facilitated. Future efforts or initiatives at an EU level should be based on similar discussions and negotiations as are conducted nationally.

STM has noted that we believe that libraries for non-commercial research or educational institutions should be able to create a digitized copy of a print original, or a digital copy of a digital original, to enable access by those with visual disabilities (e.g. blindness or inability to read small print) for STM materials that are not already made available for these purposes. The library may use specialised formatting of the digital copy to enable the copy to have an enhanced visual display or sound capability. In order to obtain such copies, users with visual disabilities should register with or otherwise be certified by relevant local or national authorities or organisations that specialise in such disabilities.

STM publishers also encourage government and foundation grants and funding, and cooperation amongst libraries and such organisations, to ensure appropriate technological standards are developed and made more accessible, in part to encourage and incentivise publishers to develop new products for such users.

(14) Should there be mandatory provisions that works are made available to people with a disability in a particular format?

STM is willing to work with representatives of disabled persons to agree on standards of design and publishing that favour the conversion of works presented in a particular format to a format that is useful to the disabled.

However, by requiring right holders to provide access to works in whatever format, the line is crossed from a mere exception to copyright protection and a real obligation is created burdening right holders. STM does not believe the solution of the problems facing the disabled lies in the shifting of the burden to right holders. The issue, fundamentally, is a societal one and one of state funding.

(15) Should there be a clarification that the current exception benefiting people with a disability applies to disabilities other than visual and hearing disabilities?

STM accepts that people suffering from a visual disability require a different format in order to access the written word. However, when used in the context of an exception to copyright or license negotiation, the term "disability" (whether visual impairment or a disability other than a visual disability) should be carefully defined to ensure that any exception actually serves its intended purpose – that of enabling access to those who would not otherwise have it. Pre-existing market solutions, such as text-based access for the hearing impaired, or audio-based access for the blind, should not be undermined - see answers to Questions (13) and (14) above

(16) If so, which other disabilities should be included as relevant for online dissemination of knowledge?

See answers to Questions (13), (14) and (15) above.

(17) Should national laws clarify that beneficiaries of the exception for people with a disability should not be required to pay remuneration for using a work in order to convert it into an accessible format?

See answers to Questions (13), (14) and (15) above.

(18) Should Directive 96/9/EC on the legal protection of databases have a specific exception in favour of people with a disability that would apply to both original and sui generis databases?

STM is not aware that any holder of rights in a database has to date advanced the argument that a database should be treated differently from a copyright-protected work when it comes to accommodating persons suffering from disability. STM would be willing to work with interested parties towards practical solutions which could obviate a need to amend the Directive 96/9/EC (the “*Sui Generis Database Directive*”).

By the same token, STM would not object to the introduction of a provision into the *Sui Generis Database Directive* that mirrors the equivalent provision in the Directive (2001/29) and that is premised that access to a *sui generis* database is achieved by legal means in the first place.

(19) Should the scientific and research community enter into licensing schemes with publishers in order to increase access to works for teaching or research purposes? Are there examples of successful licensing schemes enabling online use of works for teaching or research purposes?

The core business of STM publishers is the provision of access to e-journals and e-books to educational and research institutions. More information is in this way to more people around the clock than at any time before. If there is a success story of the Internet and the market, it is in fact the provision of STM publications to the educational, scholarly and research communities through a wide variety of licensing options and schemes.

Materials that are electronically accessible to research or educational institutions may be used in distance learning as well.

When it comes to additional types of electronic use of materials available in print, and the implementation of pertinent exceptions and limitations through contractual arrangements, the following should in STM’s view apply:

“On the spot consultation” on dedicated terminals within library premises

We support the proposition that libraries of non-commercial research or educational institutions should be able to offer access to works acquired in print for a library's permanent collection on terminals situated within the library premises, where these are not available electronically from the publisher. In such cases, digitisation and display may be permissible under an exception for research and private study within a publicly accessible library (a library with no direct or indirect commercial purpose) on dedicated electronic reading places. However, the displayed digitised extra copy and any print-out copies of the work made by researchers and students under exceptions available to them should be permissible to the extent that a royalty fee is paid either under licence to the publisher concerned or to a collective licensing society acting as a clearing house.

However, as far as digital versions or electronically accessible works are concerned re-scanning or display on any terminals, whether dedicated or not, should remain a matter of licensing terms and conditions. Moreover, where display on dedicated reading places is permissible, not more copies of a work that is still in-print and available at a reasonable commercial price may be made available or displayed simultaneously than have been made part of the print collection. Where the library or educational institution wishes to display additional copies simultaneously, further royalty fees should be payable either to the right holder or the collective licensing society the right holder is affiliated with.

Course-packs

STM notes that course-packs and their digital equivalent "Electronic Reserves" constitute an area where right holders and user communities are best served by electronically facilitated rights-clearance that can take various shapes and forms. Terms and conditions (licence or subscription agreements) for born-digital content may provide an all-in fee that permits the use of these electronic resources in the generation of Course-packs and/or Electronic Reserves. However, for some content this may not be available and a separate electronic rights clearance may be appropriate. Moreover, many Course-packs and Electronic Reserve items combine items that are from born-digital sources subscribed to by the library or institution, legitimately digitised resources and print resources. In such cases a licence from a clearing house such as a properly mandated collective licensing society represents a win-win solution.

The market for providing access to academic and educational publications by electronic means remains at an early and highly dynamic stage. Exceptions introduced into this innovative market would only hamper its development.

(20) Should the teaching and research exception be clarified so as to accommodate modern forms of distance learning?

The more exceptions are introduced, the less likely is it that innovative teaching and learning tools will be developed in the market. See more generally our answer to question (19) above.

(21) Should there be a clarification that the teaching and research exception covers not only material used in classrooms or educational facilities, but also use of works at home for study?

One of the greatest tools for distance learning at the moment is the provision of "course packs" and the electronic equivalent "electronic reserve", whiteboards and blackboards. See the answer to question (19), in particular the section dealing with "course packs".

(22) Should there be mandatory minimum rules as to the length of the excerpts from works which can be reproduced or made available for teaching and research purposes?

Minimum rules are unhelpful for two reasons:

Firstly, the electronic revolution has not only added a delivery channel on how knowledge is disseminated, the electronic revolution has also changed what may be the subject of a commercial transaction: in the electronic world, it is entirely possible for a publisher to offer access to chapters, and even sections of a work at a particular price, whereas in the analogue world the publisher would only have been able to sell the entire book (all chapters). Similarly, individual articles are widely available for download and a market has developed in this field, whereas in the analogue world the smallest item available for purchase was the issue of a journal.

Secondly, copyright, and copyright infringement, is based around the concept of a "substantial part" of a work. The test for whether or not a substantial part has been copied is both a quantitative and a qualitative one. It would therefore not be recommended to introduce a mandatory minimum length.

(23) Should there be a mandatory minimum requirement that the exception covers both teaching and research?

It is sometimes stated that because education and research are in the public interest, they constitute a "certain special case" on which any copyright exception is premised (the first step under the Berne Convention).

Moreover, the presumed non-commercial nature of many educational and research activities is frequently cited as a strong indicator that the use should be legitimised under an exception. Thus, it is often rather too generally assumed that education and research uses do not "interfere with the normal exploitation", ie the market, of the rights-holder (the second step), or that such use is not "unreasonably prejudicial" to his/her interests (the third step).

STM materials are prepared specifically for education and research (their target market), which does not, therefore, constitute a "certain special case" (1st step under Berne Convention). Any unqualified exception that included all STM materials would also interfere with the normal exploitation of the work (2nd step under the Berne Convention). By way of example, the teaching exception should not apply to works intended primarily for teaching purposes, as that would conflict with their normal exploitation.¹⁵ For the same reason, a research exception should not primarily apply to works intended primarily for conducting research.

The public interest of research and education is best served by encouraging the creation of new publications and information services with research and education audiences (and markets) in mind. For example, journal articles, academic treatises and textbooks are published by STM publishers for the very purpose of contributing to scholarly

¹⁵ Raquel Xalabarder, *Copyright and Digital Distance Education: The Use of Pre-Existing Works in Distance Education Through the Internet*, The Columbia Journal of Law & the Arts, Vol.26, No. 2, Spring 2003, pp 101-178, at p 175.

communication and education. Libraries for non-commercial research or non-commercial educational institutions are the primary purchasers of, or licensees for, STM publisher materials and services. Offering publications and information services to these non-commercial communities, such as by way of subscription or individual journal article supply, is the very essence of “normal exploitation”. This must be left free of exceptions that prejudice the legitimate interests of rights-holders unreasonably.

Clearly any exceptions and limitations for education and research dealing with STM materials would need careful drafting to minimise any potential distortion of this vital and well-functioning system for scholarly communication.

In the 21st century, licensing is the preferred mechanism to widen access to knowledge that serves specialised markets. Where exceptions and limitations are introduced, they need to leave room for licensing solutions. Recognising this, a number of copyright laws with digital exceptions and limitations pertaining to research and education exclude STM materials designed for such markets, i.e. provide for a specific “exception from a more general exception”, as one of a number of qualifiers to the exception or limitation. It is significant that some Member States, like Spain, France and Germany have opted to implement this exception but have excluded textbooks in order to preserve a viable educational market, especially in the online environment.¹⁶

Moreover, important elements have been added to the non-mandatory exception of the Directive for teaching and research: the use has to be

¹⁶ §52a of the German Copyright Act contains a carve-out in favour of school book publishers who would be prejudiced where a trade publisher may not suffer equally under an exception. §52a is too widely worded in other ways and, importantly, fails to provide a similarly warranted carve-out for STM publications serving the academic market. Art. 122(5)(e) of the French Intellectual Property Code does contain such a carve-out in favour of academic textbooks and related materials. Section 32(2) of the Spanish Copyright Act provides for a general exception in favour of teachers who use small parts of in-copyright works for illustration in the class room. Importantly, section 32(2) also provides a carve-out from that exception for school and university books. Section 110 of the US Copyright Act has a similar provision (an exception to the “TEACH Act” exception that notes that works that are “produced or marketed primarily for performance or display as part of mediated instructional activities” must still be purchased or licensed through normal market means).

“for the sole purpose of illustration” only, which tends to limit the amount of copying and dissemination that can be undertaken.¹⁷

Finally, STM does not believe that the two concepts “education” and “research” should in any way be bundled together. Exceptions and limitations should be focused specifically on one or the other and in each case sufficiently narrowly so as not to discourage investment in publication and information services for the education and research community, respectively.

(24) Should there be more precise rules regarding what acts end users can or cannot do when making use of materials protected by copyright?

There is no universal understanding of the term “User-Generated Content” (“UGC”). Some users, commercial organizations and their representatives seem to suggest that the mere collation of copyright-protected works, or the linking to such works is a form of UGC. STM disagrees with this view. UGC comes into existence where a user creates a new work, or adapts an existing copyright-protected work or creates an original selection or arrangement of copyright protected works. If UGC utilizes the works of other authors or creators, permission from those authors or creators should be sought. Thus, the creation of UGC involves necessarily the accrual of copyright protection in relation to a creative act by the user. In STM’s view national copyright legislation in EU Member States and elsewhere is sufficiently clear to allow such UGC to come into existence and to thrive.

As mentioned above in the context of orphan works (see answer to question (10)), STM publishers, like other publishing sectors, have developed a sophisticated copyright permissions system. Nothing stands in the way of creative users to make use of this system when generating content.

Some publishers in fact encourage the creation of adapted works from a selection of learning materials by teachers and learning facilitators. The

¹⁷ As stated above, any exception would have to comply with the three-step test and be “state-of-the-art”, ie narrowly tailored by way of describing the use accurately (eg “for the sole purpose of illustration ...”), the persons who may rely on the exceptions (eg “teachers in public schools”) and the extent (eg “excerpts or small parts of works”), see Art. 5(3)(a) of the EU Copyright Directive 29/2001 and national implementing legislation in EU Member States.

accrual of intellectual property in any such derivative works is a matter of contract between those publishers and the teachers or learning facilitators in question.

(25) Should an exception for user-created content be introduced into the Directive?

STM would oppose the introduction of a new exception into the Directive. In particular, STM shares the concerns raised by FEP and others on many occasions, including when the Directive was first adopted, that the introduction of US "fair use" principles would not sit well in the legal tradition of the EU and of its Member States.

Respectfully submitted
For and on behalf of the International STM Association
17 November 2008

Annex I – STM Submission on the Green Paper “Copyright in the Knowledge Economy”

Examples of successful licensing schemes providing online access to library collections¹⁸

The following examples of licensing schemes implemented in various European countries could be considered alternatives or supplementary measures to increase access to library collections:

1. Germany –National Licences

a) Idea and Concept

Since 1949 the German Research Foundation (DFG) is supporting the German libraries within the framework of their programme “DFG Sondersammelgebiete” to acquire specific scientific literature (building of subject specialized library collections). Since 2004 the purchase and licensing of digital content as German National licenses has been financed with a total amount of appr. 35 Mio. Euro by the DFG. Scientists/Students of German universities, applied universities, publicly funded research performing organizations such as Max Planck Gesellschaft (MPG), Helmholtz Gemeinschaft Deutscher Forschungszentren (HGF), Fraunhofer Gesellschaft (FHG), Wissensgemeinschaft Gottfried Leibniz (WGL) and institutes belonging either to Federal and/or Regional government have access to this licensed content. For some products individual users are also entitled to access this material as long as they maintain their permanent residence in Germany. The unlimited use of the licensed material is free of any additional costs and can therefore be seen as part of the “Open Access” strategy of the DFG.

b) Implementation

Because the DFG is a self-governed organization it was decided that the all work/efforts related to all proposal collections/negotiations/licence

¹⁸ This Annex complements STM’s response to Question (7): *In order to increase access to works, should publicly accessible libraries, educational establishments, museums and archives enter into licensing schemes with the publishers? Are there examples of successful licensing schemes for online access to library collections?*

agreement signatures and finally implementation with the different publishing houses were prepared, handled and executed by eight highly experienced libraries who had proven expertise in large volume licensing in the existing (print) as well as in the digital environment.

c) Licensed content

Pre-selection of the content was prepared by the DFG subject specific collection committees based on their views of high importance in each covered subject. The recommendations for the desired digital content was entered into applications by the eight appointed libraries and submitted to the "approval" committee at the DFG. After a thorough examination various applications had been approved. As of today the German National license includes:

- 6 bibliographic databases
- 33 journal backfiles packages
- 47 factual databases and e-books
- 8 reference works

Those content is from over 30 different publishing houses and covers all different kind of scientific disciplines. License agreements have been closed with each publisher individually but terms and conditions (not financial terms) are accessible via the Webpage *Nationallizenzen*.

d) Further Outlook

In the future, current content may be licensed with the support of the DFG. For the years 2008 until 2010 the DFG decided to create a new line of funding for twelve publishing houses as a test environment.

e) Additional information: www.nationallizenzen.de or

http://www.dfg.de/forschungsfoerderung/wissenschaftliche_infrastruktur/lis/projektfoerderung/foerderziele/nationallizenzen.html#1

2. Knowledge Exchange (KE) – Pan European Network organization

a) Background

Knowledge Exchange is founded on an agreement between four partner organizations, to collaborate initially for a period of three years (2005 - 2008), in an effort to improve the digital infrastructure for information and communication technology as it refers to the research and university library sector. The four KE partner organizations are:

- DEFF – Denmark 's Electronic Research Library
- DFG – German Research Foundation
- JISC – Joint Information Systems Committee
- SURFoundation Netherlands.

The four partners decided in the summer of 2008 to continue this collaboration for another 3 years.

b) Vision – Licensing

Publishers will continue to play an essential role in evaluating and distributing secondary literature. All four partner organizations currently use different models and strategies for the procurement of digital content on a national level. Within the context of licensing, Knowledge Exchange partners are exploring interaction on various levels.

c) Implementation and Licensed content

Due to the successful international tendering process which took place in the last years KE has signed a multinational framework agreement with 5 different publishing houses for the period of 2009 until 2011. This framework agreement will offer special terms and conditions to the academic community (publicly financed Higher Education and Research institutions) who have now the opportunity to opt-in into this agreement (voluntary choice to participate for the institutions with preferential terms).

i) The Scientific World Journal: a hybrid open-access / fee-based online journal in the life sciences

ii) Multi-Science Journal: an aggregator of 14 engineering journals

iii) BioOne: an aggregation of bioscience research journals run by a non-profit consortia

iv) SWETS / ALPSP: a collection of 543 journals from 36 diverse publishers, enabling small and medium-sized publishers to sell effectively to consortia and other library customers by packaging their journals in a single collection with a single umbrella license, pricing model and delivery platform

v) Wiley InterScience OnlineBooks: a package of e-book offers from these two recently merged publishers.
The content comprises hundreds of journals (over 600 journals) and E-books.

d) Further Outlook

This first international multinational framework agreement can be considered as a pilot licensing solution.

e) Additional Information

Information of the multinational Licensing Tender under:
<http://www.knowledge-exchange.info/Default.aspx?ID=248>

3. National and Regional Consortia

There is a clear trend in Europe for national (ie EU Member State) or regional (regions within for instance Germany) consortia to form licensing platforms that enable near country-wide access to all libraries of university and research organizations with large research programmes. Consortia representatives typically handle licensing negotiation and vetting of legal documentation, as well as fee collection. A Consortium would then negotiate publisher by publisher terms and conditions on behalf of its participating members, whereby each of the members still retains the freedom to add on specific content under further customized agreements.

Below follow three examples from France, Hungary and Italy:

France – COUPERIN

a) Background

Agence Bibliographique de l'Enseignement Supérieur (ABES) is the agency in charge of *Système Universitaire de documentation* (SUDOC), the Library Union Catalogue for the academic, specialist and Higher Education in France. ABES was created in 1994 with the aim of implementing SUDOC, which was launched in 2001 representing the holdings of 1,100 libraries (plus 2,000 public or private libraries) and in excess of 8 million records.

b) Vision – Licensing

The Consortium currently consists of 127 Universities & Governmental research institutes throughout France & the French Overseas Departments. Each Couperin member has access to a basic collection from publisher with whom Couperin negotiates. Additionally, each member may choose its own additional list of content. Any such additional content is subscribed directly by the members as a stand alone agreement.

c) Implementation and Licensed content

Since 2005, ABES have assumed responsibility for negotiation of deals for SD access. Also, they validate the required legal documentation and remit the agreed e-access fees according to their own internal formula among members. Individual members are still responsible for adhering to the agreement terms and conditions. Thus, each member signs its own agreement on top of the documents signed by ABES.

d) Further Outlook

The current agreement is set to terminate in 2010, but remains renewable.

e) Additional Information

<http://www.couperin.org/>

Hungary – VOCAL Consortium

a) Background

Some university libraries, using the same integrated system (CORVINA), have started the VOCAL Shared Catalogue Project (<http://vocal.lib.klte.hu>), containing the OPACs of 21 university libraries. The VOCAL database has become the basis for the National Document Delivery System Database(ODR) and has succeeded in becoming the most important operating and increasing source of bibliographic and holdings information of books.

b) Vision – Licensing

At the moment 46 institutions participate in the VOCAL consortium. More may join in the future.

c) Implementation and Licensed content

A basic collection of content from each publisher who negotiates an individual licence with CRUI is available. Members may further customize the centrally negotiated collection, or pre-negotiated basket collections, by adding additional content.

d) Further Outlook

Already now, and as the information needs of Hungary's researchers keep changing, more consortia and collaborative projects are emerging in Hungary.

e) Additional Information

For information on the Vocal association of libraries and a list of members, see; <http://vocal.lib.klte.hu/angol/rendszer.html>.

Italy – CRUI Consortium

a) Background

Conferenza dei Rettori delle Università Italiane (CRUI) is a national consortium with 63 members. This consortium was derived from earlier contracting bodies such as the CILEA Digital Library and “CARE” (*gruppo di Coordinamento per l'Accesso alle Risorse Elettroniche*).

b) Vision – Licensing

The said consortium negotiates on a truly national basis access for all universities in Italy that have significant research projects. The outcome of the negotiation offers participating libraries various collections as options.

c) Implementation and Licensed content

A basic collection of content from each publisher who negotiates an individual licence with CRUI is available. Members may further customize the centrally negotiated collection, or pre-negotiated basket collections, by adding additional content.

d) Further Outlook

The consortium is set to continue until 2012, perhaps addition additional universities over time.

e) Additional Information

<http://www.crui.it/>

4. Germany – Subito Document Delivery Service

a) Idea and Concept

Approximately 30 university libraries in Germany formed a consortium known as subito e.V. These universities formed an association and established a national and international document delivery platform with an online order process (including search mechanisms, shopping baskets etc, billing). The member libraries through their print collection act as

fulfillment organizations whenever one or several documents are requested by a user through the subito interface. A user may purchase the delivery of a document by mail, fax or electronic transmission.

b) Implementation

The implementation took several years and led to over 4,000 delivery requests per day for the supply of documents to recipients based in over 50 countries. At that stage publishers at first unsuccessfully offered to negotiate a licensing solution for deliveries internationally and nationally (ie to German-speaking countries where member libraries of subito are situated). After an intense negotiation a licensing solution was found in 2006 concerning deliveries to non-German-speaking countries. After litigation in Germany, and after the Copyright Act in Germany was amended and §53a enacted, a licensing solution comprising also the German-speaking countries was found. This enables publishers and subito e.V. today to move forward based on voluntary licensing, making individual articles available potentially in the whole of the EU and beyond.

c) Licensed content

A great number of German and international publishers have issued licenses to subito e.V. and its member libraries. Prices are set by the publishers and are discounted for students and/or based on other criteria, eg paper-only delivery via a participating library.

d) Further Outlook

Additional document delivery organizations elsewhere in Europe are approached with a view to finding licensing arrangements and solutions.

e) Additional information:

www.subito-doc.de

<http://www.stm-assoc.org/subito/>
