



ALPSP Advice Note No. 18

When a society journal changes publisher

Please note that ALPSP cannot vouch for the absolute accuracy of these guidelines and disclaims all responsibility for the consequences of acting on the advice which they contain.

When a society journal moves to a new publisher: ALPSP guidelines for good practice

When a society journal moves from one publisher to another, a number of points need to be taken into account to ensure a smooth handover. Planning should commence as far ahead of the actual transfer as possible, to minimise disruption and possible loss of subscribers. From the perspective of ALPSP members, the key priority must be to ensure uninterrupted access to the content for the scholarly community.

Ideally, of course, the contract between the society and the publisher should always make clear exactly who owns what - copyright in the content; the journal title; the cover and internal design; the physical stocks; the electronic files (both the underlying content, and the specific formatting/tagging); editorial work in progress; subscriptions or other payments not yet earned; the non-member subscriber list; the free list; and the member subscriber list – and what should happen on transfer (including how any valuations for the above items will be arrived at). The arrangement will not necessarily be the same for every item in the above list. If the contract does not spell it out, then an agreement will have to be reached between the transferring publisher, the society, and very possibly the receiving publisher too; this should cover every item listed here. This can be very difficult and time-consuming, and a clear and explicit contract can do much to avoid problems.

It is also wise, in the case of journals not owned by a publisher, but published under contract, for the customer licence to make clear what will happen in the case of a change of publisher – guarantees of ‘perpetual access’, for example, may be difficult to honour in such circumstances; it is wiser to guarantee continuous access only for the period for which you are the publisher. The PA/JISC model licence gives suitable wording.

Much of what is outlined below would also apply in a purely commercial transfer of ownership between one publisher and another.

Copyright

If copyright in the journal’s content belongs to the society, then no problems arise. Even if copyright in the articles is retained by some or all of the authors, the society would still hold copyright in the journal itself (as a collection of articles, together with additional material such as tables of contents, editorial matter and indexes). However, if copyright belongs wholly or in part to the transferring publisher, this will need to be transferred explicitly to the receiving publisher (or, better, to the society). Clearly, copyright lines cannot be changed on existing print issues and they should not be changed on back electronic files either. The transferring publisher should, however, pass on any copyright requests or payments to the new copyright owner and it is helpful to notify organisations such as PLS, CLA and CCC of the change of ownership (the ISSN centre should also be informed).

If the transferring publisher has only the right to publish for a specified period of time, and that period has come to an end, then they have no

right to any compensation; if, however, they have some permanent stake such as total or partial ownership of the copyright, then compensation may be required.

In addition to copyright in the content itself, there is also the question of copyright in the design of the journal – particularly the cover – and in the typographical arrangement (the latter would quite clearly belong, in English law, to the transferring publisher). There might also be deemed to be rights in the electronic format, although this is not covered by copyright law. Some consideration might be expected to allow the receiving publisher to use these.

Journal title

Titles are not copyright, although – as an extreme measure – they can be registered as a trade mark (in the US they can also be registered as a domain name). However, the journal contract should make clear who has the exclusive right to use the title (normally, this would be the society, unless the journal was originally founded by the publisher). The contract might also prevent the publisher from launching a directly competing journal (including, but not limited to, one with a very similar title) for a specified period of time after transfer. The assumption would be that the title goes with the journal, and thus belongs to the society, but without contractual evidence there might be circumstances in which this could be disputed.

Cover and internal design

If the journal has its own distinctive cover and internal design, then the society may wish to retain this for reasons of continuity and recognition (although, of course, the new publisher may suggest improvements). However, if the design is a standard one created by the transferring publisher, they may not be willing for the receiving publisher to use the same design, as they may feel that it is part of the publisher's, rather than the journal's, brand. If the cover design incorporates an illustration for which permission had to be cleared, the receiving publisher will need to ensure with the copyright owner that the permission may be transferred (unless the permission was time-limited, it is unlikely that any further payment would be required).

Physical stocks

Technically, the ownership of the physical stocks of the print journal depends on the financial relationship between the society and the publisher. If the publisher paid all the costs, and the society received a fee or royalty, then the publisher probably owns the stocks outright. If, on the other hand, the costs were shared (e.g. in a profit-sharing agreement) then the Society has, in fact, contributed its percentage of the costs and thus has part ownership of the stocks. If the society pays all costs, and pays the publisher a fee or commission, then the stocks belong to the society outright. Ideally this should be clearly spelled out in the agreement.

However, since, in normal journal accounting, no value will have been placed on these stocks, the question of ownership is hypothetical;

furthermore, the transferring publisher will not want to be responsible for maintaining stocks and supplying back volume and single issue orders for a title which they no longer publish. It should not therefore be necessary for any payment to be made for the acquisition of the stocks. There is likely, however, to be a charge for carriage (or the new publisher may be asked to arrange collection). Whether the society or the new publisher pays depends on the new agreement. It is possible that there are more copies than are required by the receiving publisher; the remainder may be sold to a specialist distributor (although the market for back issues is declining) – who retains the proceeds should be agreed – or may simply be pulped. Whatever the outcome, both publishers' catalogues and websites should make clear from where back issues can be obtained.

Electronic files

If – as is highly likely these days – the journal is available online, there are a number of special considerations to do with the online version. The files may go back over a number of years, and there may be contractual commitments to provide continuing access to both current and former subscribers. A further complication is that the file format may not be compatible with the receiving publisher's system. The guiding principle should be that the content should continue to be available, either from one or other publisher's site or from that of a third party.

Technical ownership will be determined in the same way as for print stocks; as with print stocks, it is usual in journal accounting for the cost of file creation to be written off on publication, so the files probably do not have an accounting value. However, if an archive has been retrospectively created by scanning print copies, this cost will not have been written off and it would be reasonable for the transferring publisher to expect payment for these files; this would need to be negotiated between the parties.

The electronic files may well be in a different format, although increasing industry standardisation is highly desirable. Responsibility for converting the files, if necessary, to a format compatible with their own system rests with the receiving publisher; they may not be able to undertake conversion into multiple formats, and may be forced by cost considerations to make the transferred files available only in the most economical format for conversion (such as PDF). This may mean that the full functionality of the receiving publisher's system cannot be applied to the transferred files. If one or both publishers make their journals available through an online host, rather than on their own system, these discussions must of course involve the host. As mentioned earlier, the copyright line on the transferred files should not be changed, even if copyright ownership has in fact changed on transfer.

The electronic files may have added features – tagging, metadata, classification – in addition to the content; some of these will be specific to the transferring publisher's system and will therefore be of no value to the receiving publisher (they – or, if they feel particularly protective, the

transferring publisher – will need to strip them out), while others – particularly metadata – are likely to be of value.

If the content is also offered via any intermediaries or aggregated services, it makes sense to ask the intermediary/aggregator to change the publisher branding/linking (for back as well as future issues) at journal and volume level; whether or not they make a charge for this will depend on the receiving publisher's agreement with them.

If the complexities of file conversion mean that the receiving publisher will not be able to offer access to back files immediately, it may be appropriate to reach agreement with the transferring publisher to continue to make the files accessible to authorised users for a period of time – say, six months. Alternatively, it may be more practical for the back files to be made freely available for the time being, to save the transferring publisher the cost of access control. Publishers are in any case strongly encouraged to make arrangements for the archiving of their e-journals with a trusted third party, such as a national deposit library; these files could then be made available to some or all users in cases where complete transfer (or transfer in all formats) of electronic back files between the publishers is not possible.

Satisfying the transferring publisher's contractual commitments to provide back issue access to former subscribers will cost the receiving publisher money, without any corresponding revenue. The options depend on the exact terms of the transferring publisher's licence with customers, but the most pragmatic solution might be to provide free archival access (to all comers) for issues published prior to the transfer; or to send a CD-rom, or indeed electronic files, to affected customers for local loading. If the receiving publisher does decide to offer controlled access to these customers, then the transferring publisher must of course provide all the necessary contact details, as well as details of the precise volumes and issues to which each such customer has access, and IP address ranges or usernames and passwords; the financial details of their relationship with customers will, of course, remain confidential. If username and password access is provided, the receiving publisher will probably need to ask all such customers to re-register with their system. If an unequivocal contractual commitment to provide 'perpetual' access was made by the transferring publisher, then strictly speaking it should bear the cost of whatever solution is adopted (be careful of this when drawing up your own journal licences for journals you do not own!); however, the receiving publisher's acceptance of this responsibility might be seen as a 'quid pro quo' for the transfer of the files. If, however, the transferring publisher is to continue to be responsible for providing back-file access for existing customers, then clearly it will need to maintain a duplicate set of files; it will also need a non-exclusive licence, from the acquiring publisher, to continue to provide such access to the defined group of customers (and to no one else).

Customers may well have set up their systems to access the URL at which the journal was previously found. If this is a journal-specific URL, the sensible thing is to transfer it to the receiving publisher; it has no further

value to the transferring publisher. On the other hand, if it is a publisher-specific URL this will not be possible; the transferring publisher should retain the URL, with an automatic redirect, for at least a year. Of course, if the publisher uses DOIs for the journal and for individual articles within it, all that is necessary is for the receiving publisher to inform the DOI registry of the new URLs which correspond with all the relevant DOIs (evidence will be required from the transferring publisher of the change of publisher).

Editorial work in progress

Articles and other materials which were being worked on within the publisher's office but had not yet been published should be transferred to the receiving publisher; payment might be requested for work done up to the point of transfer, but this is unusual. Materials which had been typeset may be of value to the receiving publisher, if the design is unchanged, and if so the typesetting should be paid for; however, if the design is to be changed, the files may not be usable. The receiving publisher should also transfer all records relating to papers expected, with referees or in the course of editing or production, together with any retained correspondence or manuscripts. If there is an agreement between the publishers, this should specify the format and quality of the work to be transferred.

Subscriptions or other payments not yet earned

All payments relating to issues not yet published at the time of transfer (e.g. subscriptions or advertising) should be transferred to the receiving publisher with all necessary supporting information. In addition, all payments received subsequent to the transfer should be transferred immediately, even if they relate to issues originally published prior to the transfer (e.g. photocopying or permissions income).

If the arrangements can be set in place in time, it is more sensible for the receiving publisher to run the renewals for the first volume which it will publish. Sometimes, however, this is not possible, in which case the transferring publisher might arguably expect some payment for this before transferring the funds and accompanying records. If there is an agreement between the publishers, this should provide for a reconciliation statement to spell out the exact status of all such moneys.

Customer details

Ownership of the non-member subscriber list is sometimes disputed. Depending on the financial arrangement, the transferring publisher might argue that the list had been built up at its sole effort and expense. Clearly the list has continuing value to the transferring publisher for marketing other related products and even – though ideally the contract should preclude this (although such restrictions may not always be enforceable) – to launch a directly competing journal. If there is nothing in writing, the most pragmatic compromise may be for the transferring publisher to provide a copy of the list to the receiving publisher, with all necessary contact, agent and payment details (including past subscription history), but to be entitled to retain the customers' details on its own system for marketing purposes, subject of course to Data Protection

requirements. If the list clearly belongs to the transferring publisher, it may be possible to secure it for a modest payment of so much per name – the cost of receiving the customers anew (bearing in mind the risk of failing to do so) should be compared with any proposed charge. It could be argued that end-customer details supplied by a consolidating subscription agent do not form part of the subscriber list, but clearly this information will be of value to the receiving publisher (and may be essential if electronic access is involved). If it is impossible to reach agreement about transferring the list, those customers who subscribe via subscription agents (probably the vast majority of institutional customers) can probably be retained by informing all subscription agents of the change; direct subscribers, such as individuals, may however be lost.

The list of recipients of free copies (with reasons – e.g. Editorial Board, A&I service, exchange) is also essential and would normally be transferred without payment; this will demonstrate, for example, which secondary services are abstracting the journal. Suppliers of exchange subscriptions should be notified of the new address to which copies of their journals should be sent. The list of society members who are entitled to receive the journal is unquestionably the society's property, and will in any case be regularly updated from membership records.

It will also be necessary to transfer IP address and email and other details of online customers, if the receiving publisher is to provide uninterrupted access, and whether payment is required for this will depend on the agreement (arguably what – if anything – is said about customer records could be deemed to include such information). Even if this is done, the receiving publisher may be unable to provide access to its system, particularly if it works in a different way (e.g. by Customer Number), without asking each customer to re-register; obviously, this is extremely irritating for customers and should be avoided if you can find a way to do so – some journal hosts may be able to use the existing customer numbers on their system.

The details of those who have signed up for an electronic Table of Contents alert, or other services related to the journal, may include both subscribers and non-subscribers. Strictly speaking this could not be considered part of the subscriber details, but obviously the receiving publisher will need this information if the service is to continue uninterrupted; it may be wise to identify it specifically in the agreement. If the receiving publisher does not offer a corresponding service, it is only courteous to inform the recipients that it is being terminated and why.

Both publishers should check carefully what their responsibilities might be under UK or other Data Protection legislation (in the UK, and possibly elsewhere, these now apply both to paper and to electronic information). The receiving publisher will need to inform every customer of who is now holding their personal data and for what purpose (and must, of course, be correctly registered under any relevant Data Protection legislation); care must be taken to ensure that no sensitive information is transferred.

Agreements with third parties

It is likely that both transferring and receiving publisher will have a variety of agreements with third parties (e.g. translators, back copy dealers, print-on-demand services, intermediaries, content aggregators, document supply companies, abstracting and indexing services, linking services, etc) but these are unlikely to be identical; such agreements cannot simply be transferred along with the journal. The receiving publisher may not wish to enter into the same agreements in relation to the journal being transferred, or may wish to change the terms (some, but not all, such agreements will have foreseen the situation of a change of publisher or change of ownership – publishers should make sure that this eventuality is covered). All such third parties should be informed as soon as possible of the change and its implications; some may have created digitised files under the terms of their license, and what happens to these must be clarified. Note that not all such agreements will specify individual journals - they may be for the whole of the publisher's list.

If the transferring publisher remains responsible for pre-transfer electronic files, then they will need to make clear up to what volume and issue number the agreement applies under the 'old' terms; the receiving publisher will have to make clear from what volume and issue the 'new' agreement commences. Such complications will be reduced if the receiving publisher is taking over the pre-transfer electronic files.

'Whole collection' licences

Larger publishers may have consortium or other licensing deals which include access to all their journals (and, sometimes, other publications). Removing a journal from, or adding a journal to, such a licence may have cost implications and customers need to be informed well in advance if they are going to lose, or indeed gain, access to the journal. This is particularly important where the receiving publisher does not offer such a licence, and the customer will need to subscribe to the journal separately if they wish to maintain access; receiving publishers might wish to consider making a special 'transitional' arrangement in such circumstances. The commercial terms and conditions of the original licence will, of course, remain confidential to the transferring publisher.

Other services provided to the Society

The transferring publisher may provide additional services to the Society, such as creating and managing its website, dealing with membership records and subscriptions, publishing proceedings or even running conferences. On transfer, it needs to be made absolutely clear whether or not all of these services are also to be transferred to the receiving publisher; if so, appropriate transfer arrangements – parallel to those described here for the journal itself – will need to be spelled out.

Staff

There may be employees of either the Society or the transferring publisher who work exclusively on the journal; in the UK, these would be automatically transferred with the journal under the Transfer of Undertakings Protection of Employment legislation, and in other jurisdictions similar legal protections may apply. It is very important to establish the legal position, for example as regards who is responsible for

any removal or redundancy costs. It is recommended that you take specific legal advice on this aspect.

Normally, in the case of a Society journal, the Editor's contract would be with the Society and not with the publisher. However, if the contract is with the transferring publisher, this will have to be terminated (such contracts should, of course, always provide for such a situation) and a new contract entered into with the receiving publisher (unless, of course, they wish to appoint a new Editor).

General

With any change of publisher, it is essential to keep your customers informed. As soon as the change is agreed, subscription agents should be notified and the receiving publisher may also wish to make announcements on its website, in its catalogue etc. The society should also inform its members and may wish to place an announcement (or better still, a series of announcements) in the journal itself. Renewal notices for the first subscription period handled by the receiving publisher should contain a prominent notice drawing customers' attention to the change of publisher and the new payment arrangements; if the business model is to change (for example, from 'electronic free with print' to a separate charge for electronic access) particular care will be needed. In view of the difficulties which may occur in transferring customer records smoothly, it is a good idea to extend the normal grace period for subscribers for longer than usual (two months at least). Any change in arrangements for access to back issues (particularly for former subscribers) should be clarified to those customers affected. Advertisers should also be contacted.

It is not necessary to change the journal's ISSN unless the title has also been significantly changed, but the ISSN agency should be informed of the change of publisher. As mentioned above, all DOIs relating both to the journal itself and to individual articles should be updated with the appropriate new URL; contact the DOI registration agency for details of how to do this. It is also sensible to inform PLS and CLA if you are UK-based, or CCC if you are in the USA, to ensure that all payments from collective licences are appropriately redirected. In addition, the US Postmaster must be informed of the change of ownership in order for the second-class mail permit to be updated.

Both publishers will need to obtain Customs and Excise (or local equivalent) clearance that the transfer of the journal is not subject to VAT or similar taxes.

It is extremely helpful if the transferring publisher will agree to continue to list the journal on its website and in its catalogues for at least a year, with a notice saying 'Now published by ...' and if possible including the receiving publisher's contact details, or at least their website.