Society of Biblical Literature Response to Requirements Analysis September 3, 2002

Introduction:

The Society of Biblical Literature (herein SBL) filed requirements for a digital rights expression language with the Rights Language Technical Committee (RLTC) of the Organization for the Advancement of Structured Information Standards (OASIS). Those requirements were analyzed by the co-chair of the Requirements subcommittee (Hari Reddy) and the results of that analysis was recorded in a document styled "Requirements." This response addresses the treatment of the SBL requirements in the version of the "Requirements" document dated August 27, 2002.

Procedural Concerns:

The SBL has two procedural concerns which may be relevant to its comments on the analysis of its rights requirements. Our first concern is the lack of a known basis upon which requirements that are submitted are to be analyzed. The second concern is the apparent presumption that requirements must be fitted to some previously determined model.

The first concern can be determined by a simple examination of the TC minutes (RLTC Minutes 20020521.doc through RLTC Minutes 20020807.doc), in which there is no discussion of (or votes on) the basis on which submitted requirements will be analyzed. Standards development requires a good deal of flexibility but to have no criteria for deciding what requirements are related to a digital right expression language or not, seems a little too flexible.

The lack of criteria for evaluating requirements has not stopped the Requirements Subcommittee from its work. It has apparently fallen back on the Requirements Workflow document (RLTC Req SC Workflow.ppt), which notes "Sample Categorizations" at slide 5 which have been seized upon in the absence of any other directive as the criteria for "disposition" of requirements. It should be noted that these "sample categorizations" have apparently never been approved by the TC. It should be further noted that these "categorizations" are sufficiently vague to lead a number of participants to differing conclusions about particular requirements.

In order to have a useful analysis of submitted requirements, the Rights Language Technical Committee should draft for comment and discussion and ultimately approve criteria by which requirements submissions will be evaluated. This is too important to the formulation of the final requirements for a standard to be left to chance or ad hoc decisions in the absence of any clear directive by the TC.

The second concern of the SBL is the apparent mapping of requirement submissions against an already known end result. It is like wandering through a "Looking Glass" and hearing: "Standard first! Requirements later!" The notation in the Requirements document:

> ## Definitions
> The definitions for the words used in the RLTC requirements document are those found at http://www.m-w.com/. The words used in the RLTC requirements document do *not* take their definitions from any source requirements documents or any other documents (including the XrML specification) submitted to the RLTC.

does little to persuade the SBL that this is not the case.

The words such as "core", "standard extension", "domain extension" and others, have no meaning outside of a particular context. The analysis of the SBL requirements gives evidence that a particular context has been chosen for those words, prior to the formulation of any standard. As the SBL has experienced the standards process at OASIS and elsewhere, it is customary to settle on requirements first and then develop the standard to meet the requirements.

For example, the SBL (see SBL#2 reproduced in full below) has submitted as a requirement that any digital rights expression language be "free of any restrictions on its use by any user by virtue of licensing, patent or copyright restrictions." The analysis document is barren of any analysis of that requirement or preparation of it for a decision by the Rights Language TC as a requirement for a digital rights expression language. It has been discussed but never formally noted in any of the working analysis of the Requirements SC.

A requirement that a digital expression language be royalty free is a legitimate requirement. It should be noted that such languages already exist (Open Digital Rights Language Initiative, **http://odrl.net**) for example, and unless licensing of a digital rights language is an unstated requirement for any eventual standard to issue from this group, it should be accorded the same status as any other proposed requirement. This is an example of where unstated requirements, that assume certain outcomes, are influencing the treatment of requirements for a standard to yet be developed.

Response to Hari Reddy's Analysis:

Beyond these general concerns, which are substantial and should be addressed by both the Requirements SC and the Rights TC, the SBL responds to the analysis of its requirements submission as follows:

SBL#1: Expressing Behavior

The first requirement for a digital rights language submitted by the SBL reads:

> Any rights language should be able to express in a simple and straightforward way the expected behavior from any application processing statements made in such a language.

It should be noted that this requirement as stated is somewhat imprecise (Hari Reddy's assistance in uncovering that lack of precision noted and appreciated) in that it was intended to convey the requirement that conditions on the exercise of rights should be able to be expressed in such a language. And that a user should be able to have expectations based upon the expression of those conditions in such a language. (In other words, identical conditions or expressions under identical circumstances should be treated similarly by different but conformant applications.)

The SBL wishes to amend its first requirement to now read:

> Any rights language should be able to express in a simple and straightforward way conditions on the exercise of rights and such conditions must be uniformly resolved by any conformant rights expression.

SBL#2: Royalty Free Expression of Rights

The second requirement for a digital rights language submitted by the SBL reads:

> Any rights language should be able to express in a simple and straightforward way any rights in an intellectual property in standard XML syntax, such that any user with access to a text editor on any platform can avail themselves of the language. Such a rights language should be free of any restrictions on its use by any user by virtue of licensing, patent or copyright restrictions.

Using some unknown criteria for requirements, the main point of this requirement has not been entered into the analysis matrix of the Requirements TC at all.

The availability of a royalty free standard for digital rights has substantial implications for the widespread adoption and use of a digital rights expression language. The academic community has long suffered as a result of conflicting and contradictory standards and implementations in the software industry.

Anything that lessens the chances of universal adoption of a standard for a digital rights expression language has the potential to inflict further suffering on that community. By contrast, a royalty free standard for digital rights would provide economic opportunity for vendors of products using such a language, a wide range of choices for users, and a reasonable expectation that digital rights language expressions would be effective in any computing environment.

The SBL notes that it is not a lone voice crying in the wilderness for a royalty free standard as a requirement for this rights language, similar requirements having been submitted by others (ODRL#3 for example) and have been passed over in silence rather than being included in the analysis for a decision on requirements. The SBL urges that the requirement for a royalty free digital rights expression language be brought before the Rights TC as a requirement for the digital rights expression language.

SBL#3: Fair Use

The third requirement for a digital rights language submitted by the SBL reads:

> Any rights language should be able to express in a simply and straightforward manner the "fair use" doctrine of the US Copyright Act and similar doctrines in other legal jurisdictions.

Some confusion has arisen about this requirement, in part because of the reference to the "US Copyright Act" which appears to stop the reader from following the balance of the sentence. This was not meant to be a requirement that any rights expression language embody any particular legal doctrine or rights but that it includes:

1. grants of rights from entities other than the "grantor" in the sample language, XrML, which was created by ContentGuard; and,

2. claims of rights by principals.

This requirement makes it clear that the rights model that underlies XrML, is one of exclusively contractual rights between a grantor and user, to use those terms crudely. While such a model would appear comical to a first year law student, since it excludes any other source of rights, local, state and national governments spring to mind, not to mention international treaties and organization, it has been seriously proposed as the basis for a digital rights expression language. Without the facility to express a non-party grantor of rights, any digital rights language is irrevocably flawed. Any implementation using such a language, would be forced to rely upon other sources to regulate access based upon such rights and thereby, render the digital rights language less useful and robust.

While the software industry has contributed phrases to the common vocabulary such as, "black screen of death," "blue screen of death," and "HOSED, horrendous operating

system error detected," allowing it to take over the range of rights that can be expressed seems like a poor policy choice. Rights already exist that have been granted by entities not currently recognized as the sources of rights in XrML. That is a serious defect in XrML and any similar proposal for a digital rights expression language.

SBL#4: First Sale

The forth requirement for a digital rights language submitted by the SBL reads:

> Any rights language should be able to express in a simple and straight forward manner the "first sale" doctrine for a digital resource.

This requirement is meant to express that a digital rights expression language must have the ability to express a non-revocable right to access to a digital resource and the right to transfer such a resource. It should be noted that the ability to express revocability of a right merits an explicit requirement (R 17 Revocation: The language must be able to express the permission to revoke the permissions in a selected expression.) but the converse is apparently not required.

While it may be argued that "first sale" is a doctrine specific to some jurisdictions (like the United States), the ability to express such doctrines is one that should be generally applicable in any jurisdiction. The lack of such a requirement is in part a reflection of the poor rights model that underlies XrML.

Like the "fair use" doctrine mentioned above, "first sale" is a legal doctrine that has a direct impact upon the scholarly community, both as the sources of resources as well as the consumers of such resources. Scholars depend upon libraries and similar repositories to collect and retain resources which they can then use, subject to some limitations, in the course of their research. A digital rights language that is incapable of expressing either of these doctrines would have a serious negative impact on scholarly activities.

It should be noted that the SBL is not advocating a redistribution of rights between information providers and consumers but merely the maintenance of a system of rights that presently serves the needs of both. An important part of that present system is the "first sale" doctrine and the ability to express it should be inherent in any digital rights expression language.

SBL#5: Archiving

The fifth requirement for a digital rights language submitted by the SBL reads:

> Any rights language should be able to express in a simple and straightforward manner an expression of rights to create an archival copy

of a digital resource and how the original expression of rights can be expressed as an informational part of the archival copy.

Digital resources are increasing representing the day to day record of governmental, social and financial activities, not to mention the written output of scholars and various research projects. Digital resources, however, are known to be fragile and current systems allow for archival copies to be made as a safeguard of personal or institutional investment in a digital resource. A digital rights expression language should include a minimal expression for specifying the right to make an archival copy (without determining how such copies should be made or even what an archival copy might mean for a particular type of resource). Such an expression should also transfer the digital rights expression of the original to the archival copy.

It should be noted that such a requirement would mean that archival activities would not be required to wait for standardization of archival practices for a particular type of resource and would safeguard both the user and producers of a digital resource (by allowing the archival copy for one and preserving the digital rights statement for the other).

It should be remembered in archival requirement discussions that prior to the invention of the printing press in the 15th century, that most of our knowledge of events is often based upon a handful, if not just one, witness to the historical record. A digital rights expression language that does not provide for an archiving facility, could well reduce future historians to having none.

Conclusion:

The careful reader will have noticed by this point in the response that the SBL has not replied specifically to the classification of its various requirements by the co-chair of the Requirements SC. While the efforts of the co-chair (Hari Reddy) are deeply appreciated, there is no basis in any of the Rights TC or Requirements SC documents for the "system" as it were, for classification of the SBL requirements.

Pointing at an online dictionary resource as defining the terms used in a standard ignores the common evidence that words do have different meanings for different people and contexts. If that were not the case, then we would have no need of lawyers, choice of law provisions in contracts and similar measures to resolve our differing interpretations. In order to have a meaningful classification of requirements, the Requirements SC should formally decide on criteria by which requirements will be assessed and publish those criteria with a call for re-posting of requirements.

The suggested procedure will allow the submitting parties to classify their requirements upon submission via known and explicit criteria for assessment, which should facilitate further discussion and ranking of the various requirements.

Until some criteria for assessment is published by the Rights TC or the Requirements SC, the SBL can do no more than treat the analysis of its requirements as extended comments that are based on some standard or standard unknown. It is impossible to respond to

analysis based upon an unknown standard and so the SBL has attempted to simply elucidate its requirements for a digital rights expression language and to call for express criteria for assessment of requirements for such a language.

Respectfully submitted,

Patrick Durusau
Director of Research and Development
Society of Biblical Literature
pdurusau@emory.edu

Society of Biblical Literature

Digital Rights Requirements

August 6, 2002

Introduction:

The Society of Biblical Literature (SBL) is one of the oldest learned societies in North America, being established in 1880. It represents a worldwide community of scholars working in biblical studies and cognate disciplines. SBL membership numbers approximately 8,000 members.

Members are primarily drawn from academic environments, such as universities and seminaries, although a significant number of religion professionals are also members. Members of the SBL are both producers and consumers of intellectual works and the SBL is a publisher of intellectual works. Therefore, SBL and its members have an interest in digital rights in roles as both producers and consumers.

The following is a brief enumeration of the requirements that the SBL on behalf of its members (and itself) feel are critical for consideration in any digital rights expression language.

Digital Rights Expression Language Requirements:

1. **Expressing Behavior:** Any rights language should be able to express in a simple and straightforward way the expected behavior from any application processing statements made in such a language.

   Reasoning: The utility of a rights language will depend upon wide spread use and acceptance by users. The academic community makes materials available in a variety of contexts. A bare statement of rights in an expression language, without the ability to express expected treatment of those rights in a variety of contexts, would render the rights language too crude to be useful by most academics.

2. **Expressing Rights:** Any rights language should be able to express in a simple and straightforward way any rights in an intellectual property in standard XML syntax, such that any user with access to a text editor on any platform can avail themselves of the language. Such a rights language should be free of any restrictions on its use by any user by virtue of licensing, patent or copyright restrictions.

Reasoning: Academic users are currently protected by copyright laws of various jurisdictions without use of proprietary software or payment of fees for the occurrence of those protections. While vendors may offer software with enhanced ease of use features for any rights language, it should not be the case that a rights language should be restricted users who can pay to protect their own rights. It is the intent of this requirement to duplicate the protection of copyright, which does not require licensing of copyright to protect one's own intellectual property.

3. **Fair Use:** Any rights language should be able to express in a simply and straightforward manner the "fair use" doctrine of the US Copyright Act and similar doctrines in other legal jurisdictions.

   Reasoning: Academic users rely upon the "fair use" doctrine of the US Copyright Act and other jurisdictions in their research and teaching for use of intellectual works. A rights language should provide mechanisms for easy expression of such doctrines and the use of such mechanisms by users. If the rights language does not allow for easy expression of such doctrines by information providers, the ability of scholars to pursue both research and teaching will be significantly impaired.

   That impairment will take two forms for academic users. First, as information providers, difficulty in expressing such doctrines will lessen the use of such a rights language, thereby reducing its utility to the academic community. Second, omission of such expressions in digital rights statements due to difficulty of expression may negatively impact the ability of scholars to make use of intellectual materials or to make use of them in accordance with the digital rights expressed for the resource.

4. **First Sale:** Any rights language should be able to express in a simple and straight forward manner the "first sale" doctrine for a digital resource.

   Reasoning: Current rights to intellectual property are governed in part by the "first sale" doctrine and it forms an important part of the use of resources purchased by libraries and other repository institutions. Any rights language should be capable of expressing that doctrine such that the current use of such resources by academics are not diminished by a lack of expressivity in the rights language. Diminution of the ability of academics to use resources purchased by libraries or other repository institutions will have a negative impact on their roles as both scholars and teachers.

5. **Archiving:** Any rights language should be able to express in a simple and straightforward manner an expression of rights to create an archival copy of a digital resource and how the original expression of rights can be expressed as an informational part of the archival copy.

   Reasoning: The inability of NASA to read data tapes simply by loss of the format information required to read an otherwise accessible byte stream, is an illustration

of the problem of electronic archives. Archival copies should carry the original expression of digital rights and a rights language should express how those rights should be expressed to allow creation of archival copies that carry those expressions as an informational part of the resource.

A rights language that fails to provide for expression of rights on archival copies and the protection of owners of such documents harms both the producers as well as owners of digital resources protected by such statements. Owners are harmed if archival copies cannot be accessed in the event of loss or corruption of licensing information.

Producers are harmed because in the absence of rights language to meet the archival needs of owners, such copies may be made that do not carry the rights expressions originally imposed by their producers. Such copies could result in further copying in contravention of the rights of the producers or increased support requirements for recovery of previously licensed resources. A rights language should provide a manner for expressing rights for archival copies that avoids this very real danger to both owners and producers of digital resources.

Respectfully submitted,

Kent Richards
Executive Director
Society of Biblical Literature
Professor of Old Testament
The Luce Center
Emory University
825 Houston Mill Road Suite 350
Atlanta, GA 30329
kent.richards@sbl-site.org

Patrick Durusau
Director of Research and Development
Society of Biblical Literature
The Luce Center
825 Houston Mill Road Suite 350
Atlanta, GA 30329
pdurusau@emory.edu