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Consortia and Licensing of Electronic Products - The Wave of the Future?

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INTRODUCTION

My talk is organized around a set of questions. This is not to carry the title to its logical end, rather I would like to reflect the stage we find ourselves in; there are more questions than answers in the area of consortial licensing. Also, questions make us think; answers pretend there are already solutions; questioning will involve all of you, not just me, in getting to some answers today.

Electronic information, especially that provided by monopoly organizations, are often beyond the means of a single academic institution. There is a growing trend towards joint purchasing, consortial agreements and partnerships. This talk will explore the potential and pitfalls of such agreements by examining and comparing various models for licencing and implementing shared electronic information services. A variety of case studies from different environments will be examined.

1. WHY CONSORTIAL LICENSING?

Many electronic products are priced out of reach for a single institution. As budgets become tight, libraries look toward consortia as a way of reducing costs by subscribing as a group to commonly used databases, relying on economics of scale to bring prices down. Further more, consortial licensing often serves the “greater good”, in that larger partners carry some of the cost for the smaller ones (e.g. Academic press electronic journals) The technological capacity of the group also frequently jumps to that of the most advanced partner.

There should be much less duplication of effort for even such products that could be afforded individually, eg. in developing a single contract, in negotiating all customization of the product together, and in joint publicity, implementation, problem solving, and trouble shooting. Consortia are also more likely to be able, using the resources among the membership, to add value to the products that they buy, e.g. adding local holdings to the citations retrieved by users.

Traditionally, libraries networked products locally, but more and more people agree that CD-ROM LANs may be a thing of the past. As a recent quote\(^1\) puts it: “CD-ROM has always been more suitable as a publishing and distribution, rather than a retrieval, medium. Libraries have stretched the retrieval capabilities of the little discs right to the limits of the network, and in many cases, transferred the resource to hard disks to mimic more closely the online system that they really wanted but couldn’t afford.” As a member of a consortium, a library is much more likely to be able to afford, for instance, access to a flexible client/server search and retrieval system, preferably accessible via the Internet.


2. ARE THERE ANY SUCCESSFUL LICENSING CONSORTIA?

Yes and No. There are good outcomes from a number of consortial licenses:

i. Public Libraries: The North of Boston Library Exchange (NOBLE), a consortium of 15 area libraires, has agreed to access EBSCOHost’s MasterFile index and fulltext database.

ii. Consortia including multi-type libraries: OHIOlink

iii. FirstSearch for the N.M. & Western Texas consortium. [ask Steve]

iv. COPPUL (Council of Prairie and Pacific University Libraries):

  Census data (Interface dvm, servers)
  ERL/SilverPlatter
  Current Contents on OVID®; not so successful.
The Library Service Alliance of New Mexico (“Alliance”), an alliance of six sci/tech libraries; three from Universities and three from the National Labs.

3. **CAN CONSORTIA MAKE TIMELY DECISIONS ABOUT NETWORKED ELECTRONIC PRODUCTS?**
Can groups really get their act together to do the job? Yes, if due process is followed in establishing a legal entity and if bylaws are clarified before making consortial decisions. Also, the time-honored rule for good meetings will make difficult decisions easier, especially if each member gets an opportunity, early on, to describe their local systems operation; what’s good about it, what their machine and people strengths are, and what the organization, infrastructure, and funding obstacles might be. In deciding on any joint purchase decisionmaking will be easier if their are clear goals and priorities for the group, e.g. priority is given to products serving undergraduates/the public/researchers, products available with little to no implementation problems are preferred, for instance Internet access using a standard browsers.

4. **IS THERE SUCH A THING AS A GOOD LICENSE?**
Possibly. One thing is for certain, it can only be as good as the group’s planning and preparation, i.e. how many questions you ask and how assertive and cohesive the group is in negotiating with experienced commercial vendors. A great psychological “prop” for members is a list of what would constitute a “Fatal Flaw” in any contract - three Fatal Flaws and the deal is off.

   4.1. Know as much as you can. [UNM guidelines and Nancy Buchanan’s part III]

   4.2. Have criteria that MUST be met, as well as preferred criteria. [UNM’s Check List]

5. **IS IT POSSIBLE TO NEGOTIATE BETTER CONDITIONS AND PRICES?**
Consortia has leverage; the larger and/or wealthier and/or more influential the consortium is, the more leverage it has. It is important to let the vendor know, early on, that the group will be tying the fees they are prepared to pay to the degree to which their criteria has been met. Tough bargaining stances are also more creditable coming from a group, e.g. could you as an individual say the following to a vendor? “We can only afford a network license for your product if the price is within this $ ballpark. What can we get for this amount, or to put it differently; you can choose to get some money or none.” When I was involved with negotiating a contract for COPPUL with Elsevier Inc. to pilot an electronic jounals trial, that is just what we did. ... And the company choose not to make money, rather than meet us half way!

[Take into consideration.... Buchanan VI and IV goes here]

6. **HOW DOES CONSORTIAL LICENSING GET DONE?**
The best way to start negotiations is to ask for a free trial or offer to be a beta test group for an evolving product. This should be free to members, except for local investments of peoples’ time and use of existing hardware at each site.

Secondly [ see Buchanan V ]
If members and their local users are satisfied with the product, the group should begin planning the contract negotiations, especially what the product is “worth” to them. That amount should be the bottom line. Then ask for a draft contract and invoice from the vendor. [.....responding to the contract...]

Once a suitable contract is negotiated with the vendor, the group should decide on the best way to invoice members for their portion of the licensing fee. Either, directly from the vendor to each member, or as a single invoice to the consortium, to be paid from membership fees.
7. WHAT HAPPENS TO COPYRIGHT UNDER A CONSORTIAL LICENSE /

The short answer is: you negotiate a license that over-ride copyright. Other speakers will be dealing with some of these issues at the conference, but for all intents and purposes, with the right license you should not have to worry about copyright. It is, however, prudent to protect the consortium members from third party liability, i.e. what your users do with the information they retrieve. An appropriate waiver should be attached to the contract. I have enclosed an example of such a waiver from Loyola University. [Fig....]

8. WHAT IS THE POTENTIAL FOR CONSORTIAL LICENSING IN N.M.? WHERE CAN WE GET FUNDING?

Potential exist....ERL for all schools, public libraries, colleges, and universities. Where can we get funding? “The Government!” seems to be the obvious answer. However, good consortia look at their joint resources first, exploring how reallocation can help provide the needed funds or some of it. In New Mexico we also have the opportunity to work with the various Federal Laboratories and Dept. of Defence installations. We can also tie projects to objectives that will serve large underserved groups, like Native Americans, improving our chances to get funding from national programs like the NSF. International funding for links to or joint ventures with Latin American countries, may also be available.

9. CAN I/ MY ORGANIZATION TAKE THE RISKS NECESSARY IF WE ARE NOT IN SOLE CONTROL?

This last point is actually not a question, but a hard reality consortia has to deal with. It is an issue of organizational culture and the our ability to take managed risks in an uncertain environment, in uncertain times. Our options, however, are fairly clear. We can choose trailing edge technology which is individually affordable but ultimately pleases no one, or we can be part of a potential “New Mexico Virtual Library” that pool resources and take risks to serve its users better. If such risks pay off, State and other funding would be secured. If we fail as a Consortium, at least we are in it together and the political “fall out” is distributed among the members! As a group we also have the potential to look more objectively at the lessons learned from both failure or success. What Barbra Steissand said about money in “Hello Dolly”, is also true for success and failure: “Money is like manure - you should spread it around, making things grow!”

If you are now convinced that consortial licensing has greater benefits than going it alone, keep the following in mind. Be prepared to compromise and let go of control and/or preferred ways of working, preferred platforms, etc., when the greater good is served. Also, be prepared to say NO when your local customers or conditions makes it impossible to join the group, and do it in such a way that it does not prevent the rest of the group from pursuing the project further.