

Licences:

What to Keep; What to Cancel & How to Negotiate the Deal

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Licences

- Figuring out **What to Keep** and **What to Cancel** depends very much on what **Deal** can be achieved for your library through Negotiation –
- **Understanding** your existing deals is a precursor to all other steps...
- The next step is to research what opportunities for new deals are available: either with your existing licensor or with another party. This requires knowing **How to Negotiate the Deal – and with whom.**
- Outcomes from your existing deals review and your new deals investigation and negotiation can then guide optimization of **What to Keep** and **What to Cancel.**

Current Contract Models:

Non-Electronic Simple Model



Electronic Simple Model



What is in a licence?

Understanding your existing licences and offers made to you

A licence is a contract with three elements :

1. Offer
2. Acceptance
3. Consideration

What is in a licence?

Understanding your existing licences and offers made to you

- Name
 - Who are the signatories in the licenses
 - Institution; consortium; library board
- Definitions
 - Look at what is defined
 - Archive
 - Effective date
 - Remote users
 - Content
 - Link
 - Term
 - Walk-in users

What is in a licence?

Understanding your existing licences and offers made to you

- Grant of license
 - What access is provided
 - Search; view; browse; print
 - Copying in compliance with Canadian *Copyright Act*
 - Without it the contract may override statutory rights
 - How many copies?
 - Grant remote users access
 - Walk-in access from designated terminals* (Professional ethics)
 - ILL
 - Access for a term or in perpetuity
 - Can this licence include provision for use to create 3D models that is valid?

Canadian Library Association

Position Statement on Intellectual Freedom

- **All persons in Canada** have the fundamental right, as embodied in the nation's Bill of Rights and the Canadian Charter of Rights and Freedoms, **to have access to all expressions of knowledge, creativity and intellectual activity, and to express their thoughts publicly. This right to intellectual freedom, under the law, is essential to the health and development of Canadian society...**
- **It is the responsibility of libraries to guarantee and facilitate access to all expressions of knowledge and intellectual activity, including those which some elements of society may consider to be unconventional, unpopular or unacceptable. To this end, libraries shall acquire and make available the widest variety of materials.**
- ...

Essence of the licence

- What does the licence grant
 - What does the vendor have the rights to grant?
 - Does it indemnify against infringement actions?
 - What rights do the users have and do they apply?
- What do you want your users to be able to do?
 - Make back-up copies
 - Link through Library Mgt System?
 - Use in e-reserves?
 - Print – how much?

Bundles of Rights - Rightsholders

- Section 3 of *Copyright Act*
 - to produce
 - to reproduce
 - to publish
 - to perform in public
 - to translate
 - to convert between dramatic and non-dramatic
 - to make a sound recording or film
 - to reproduce, adapt or publicly present as a film
 - to communicate to the public by telecommunication
 - to present at a public exhibition
 - to reproduce or rent out a computer program or song recording
 - **to authorize any of the above**
- Sections 15, 18 and 21
 - Performers Rights, Sound Recordings, and Broadcasters

Bundles of Rights - Users

- Fair dealing
 - Universal
- Libraries, Archives and Museums
 - Limited to defined public institutions
- Education institutions
 - Limited to defined educational institutions
- And a few others...

Licensing Rights

- **Statutory Rights can be licensed way**
 - The vendors' rights are what you are intentionally trying to purchase
 - User rights can be inadvertently licensed away
 - Users Rights are for everyone, in the public interest
 - They do not expire, no term limitation
 - There is no fee for statutory rights
- **Under a contract**
 - Only the specified parties can use the content
 - For the period specified
 - For the agreed upon fee

What is in a licence?

Understanding your existing licences and offers made to you:

- Terms of use & prohibitions
- Obligations
 - Both parties have obligations
 - Vendor
 - Uninterrupted access
 - Withdraw materials -with written notice - due to loss of rights , copyright infringement or is otherwise unlawful; refund if greater than x percentage of content
 - User support
 - Licensee
 - Security and reporting

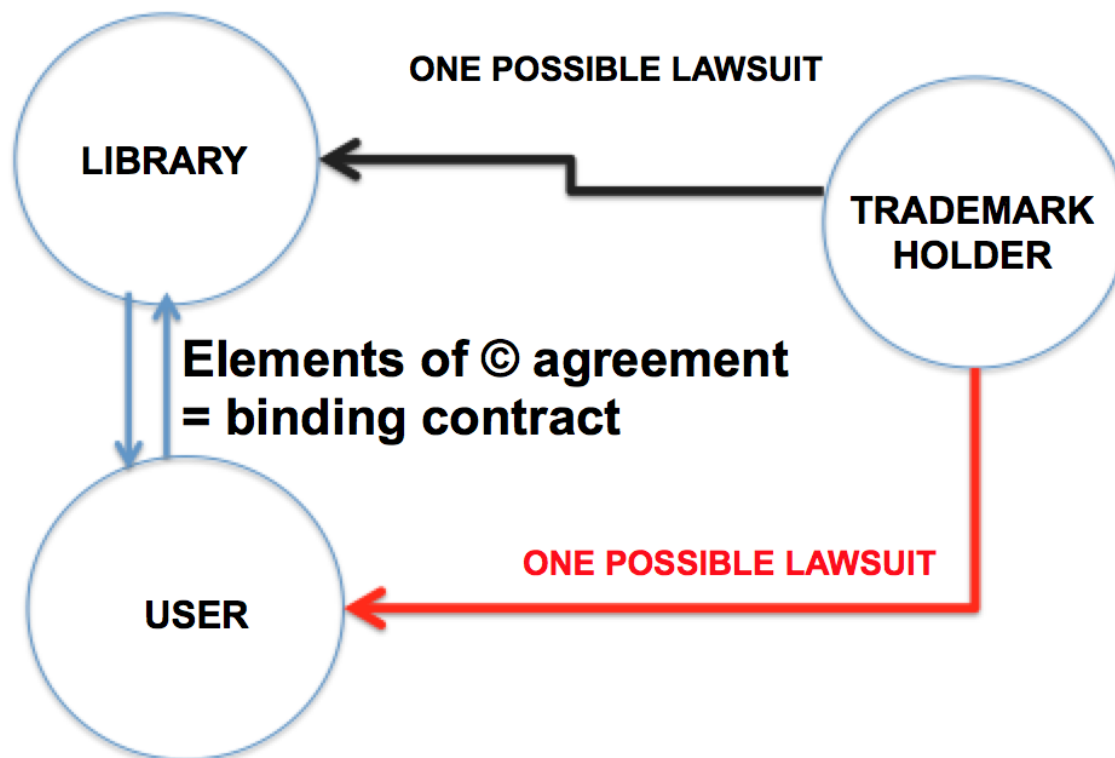
What is in a licence?

Understanding your existing licences and offers made to you:

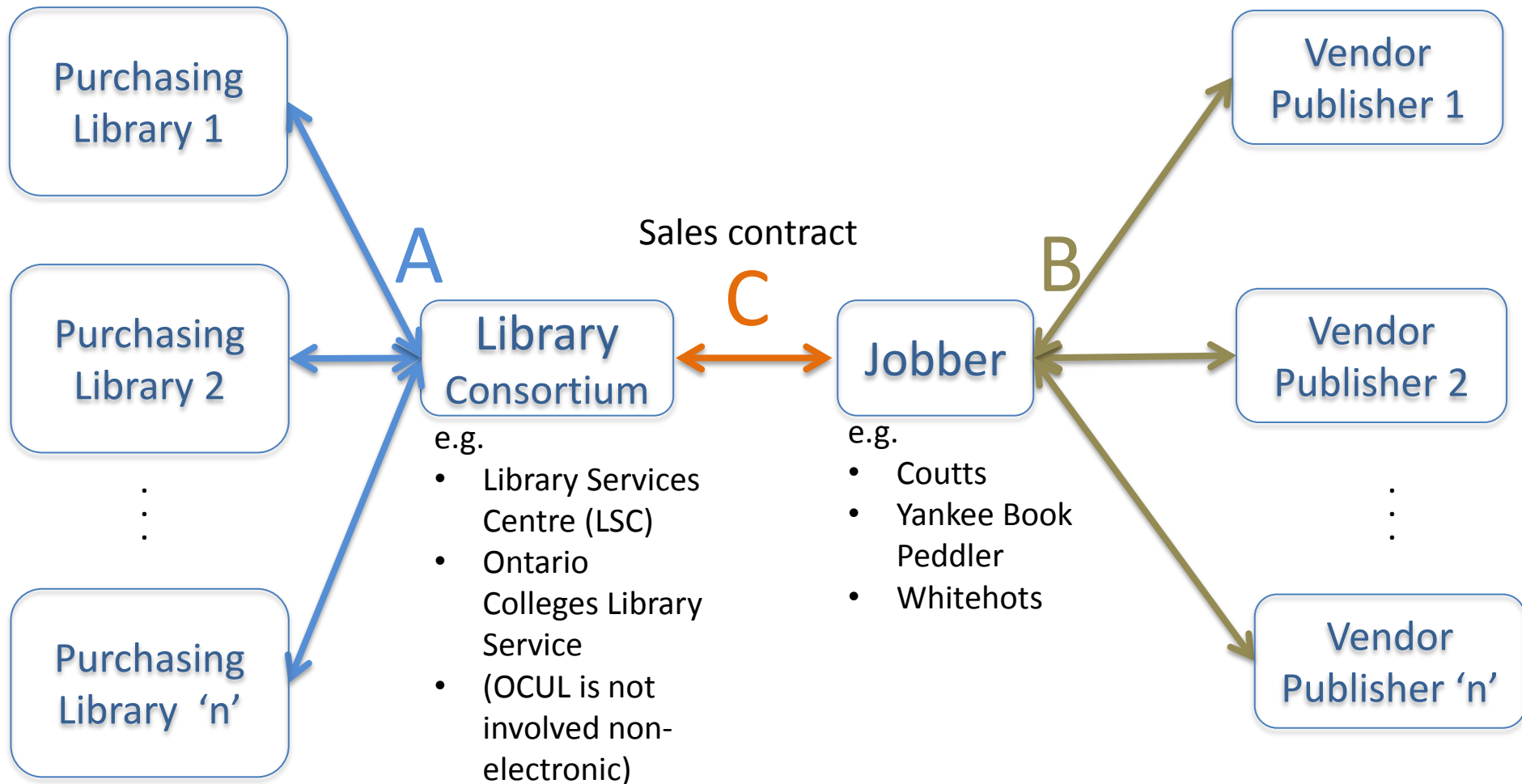
- Payment
 - Price, discount, consortial price
 - Currency
 - 30 days; 60 days
 - Disclosure - for public institutions disclosure may be required
- Warranties, indemnities, and liability
- Term and Termination
 - Provision for early termination
 - Period of notice

If a contract is about copyright only, it will have no effect on other types of lawsuits, for instance, if launched.

This is a concern for libraries involved in 3D Printing: see slides from December 4, 2015 workshop from [OLA Copyright Users' Committee](#)

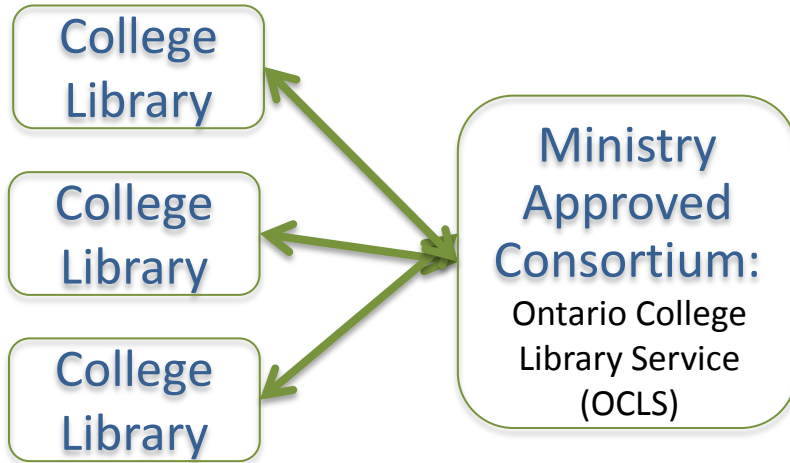


Non-Electronic Complex Model

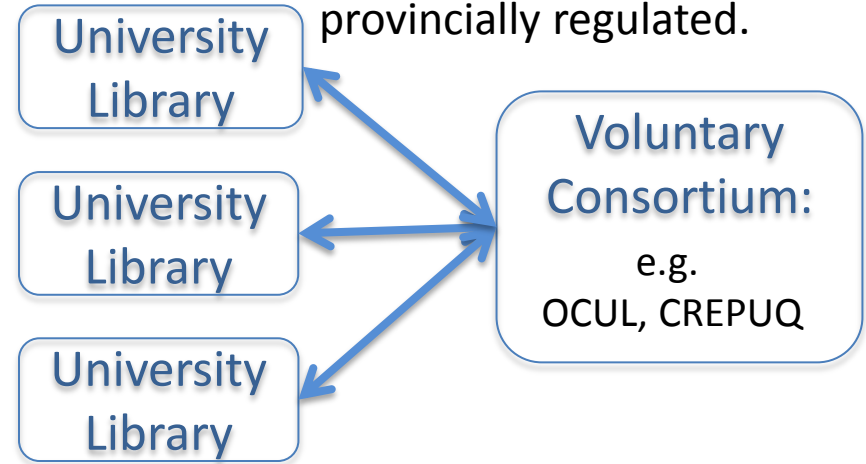


Library Purchasing Consortia are constituted in various ways depending on how the member libraries are constituted

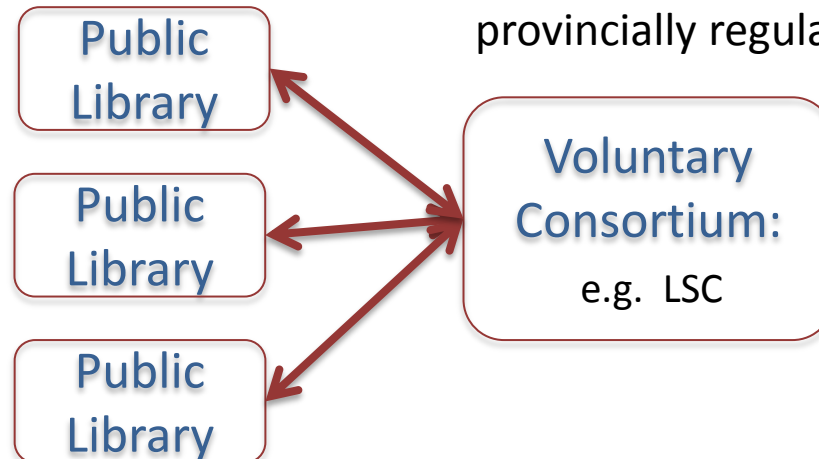
Ontario colleges founded & run by Province.



Universities founded independently, provincially regulated.



Public libraries municipally founded, provincially regulated



Consortia can be created in different combinations as long as those who govern their libraries agree:

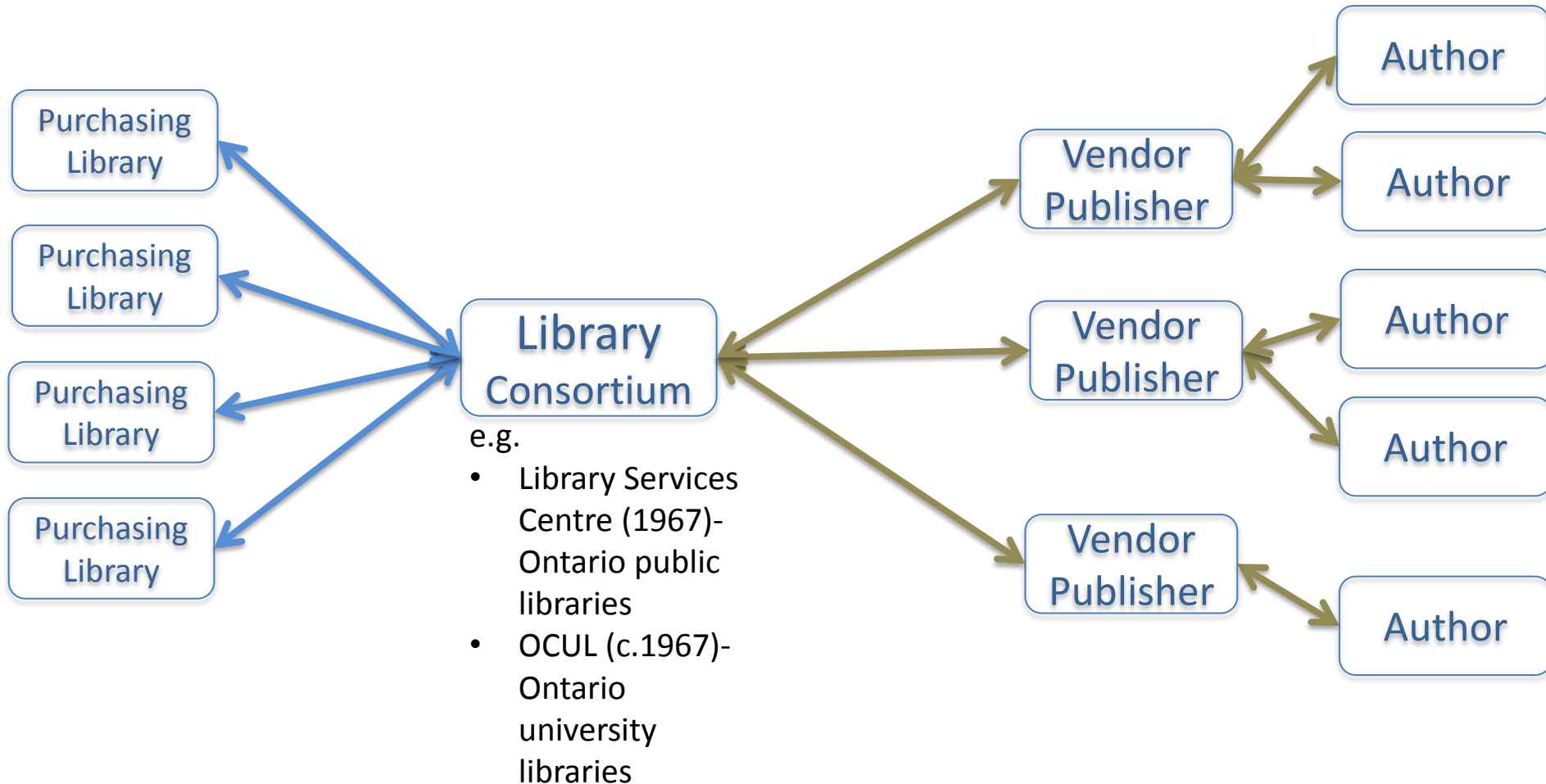
	Ministry Approved	Voluntary Membership
Homogeneity of Membership	College Libraries School Libraries	University Libraries Public Libraries Special Libraries
Heterogeneity of Membership	<i>Possibly college and school libraries? (CMEC?)</i>	Licensing or purchases through OLA?

Whether you are negotiating
directly for your library – or
indirectly through participation in a
consortium –

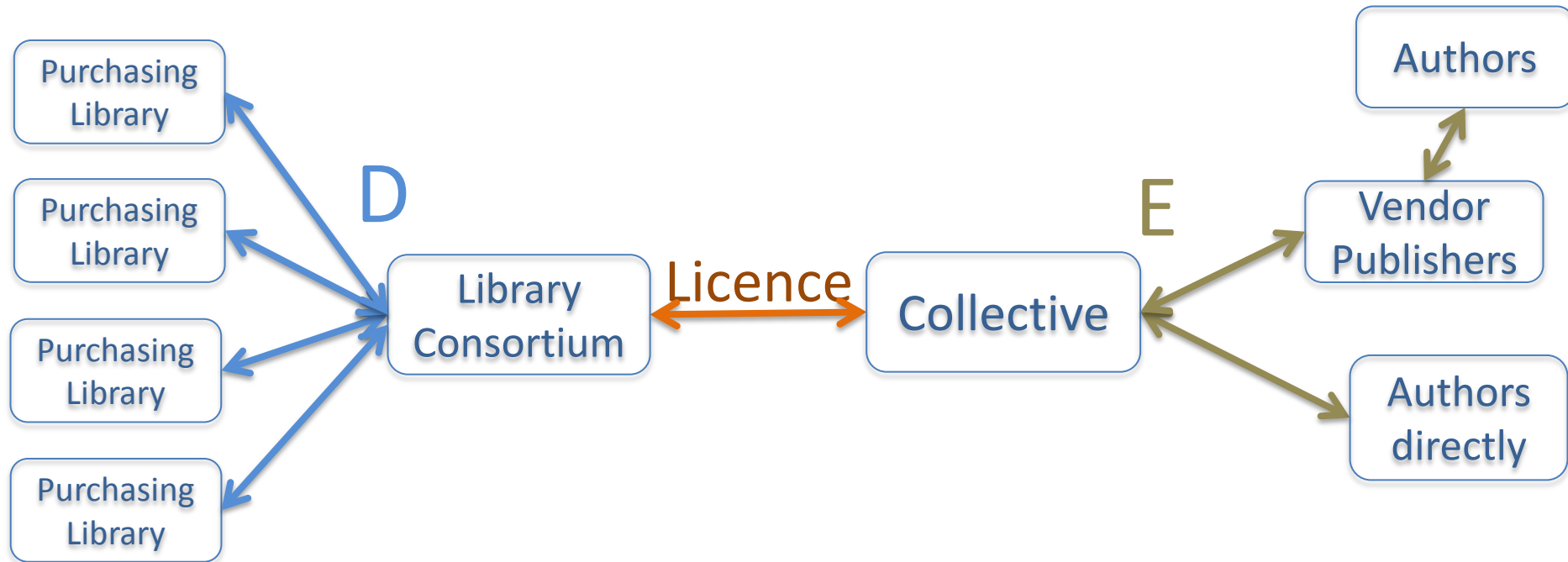
What alternatives are available?

With whom does the negotiation
take place?

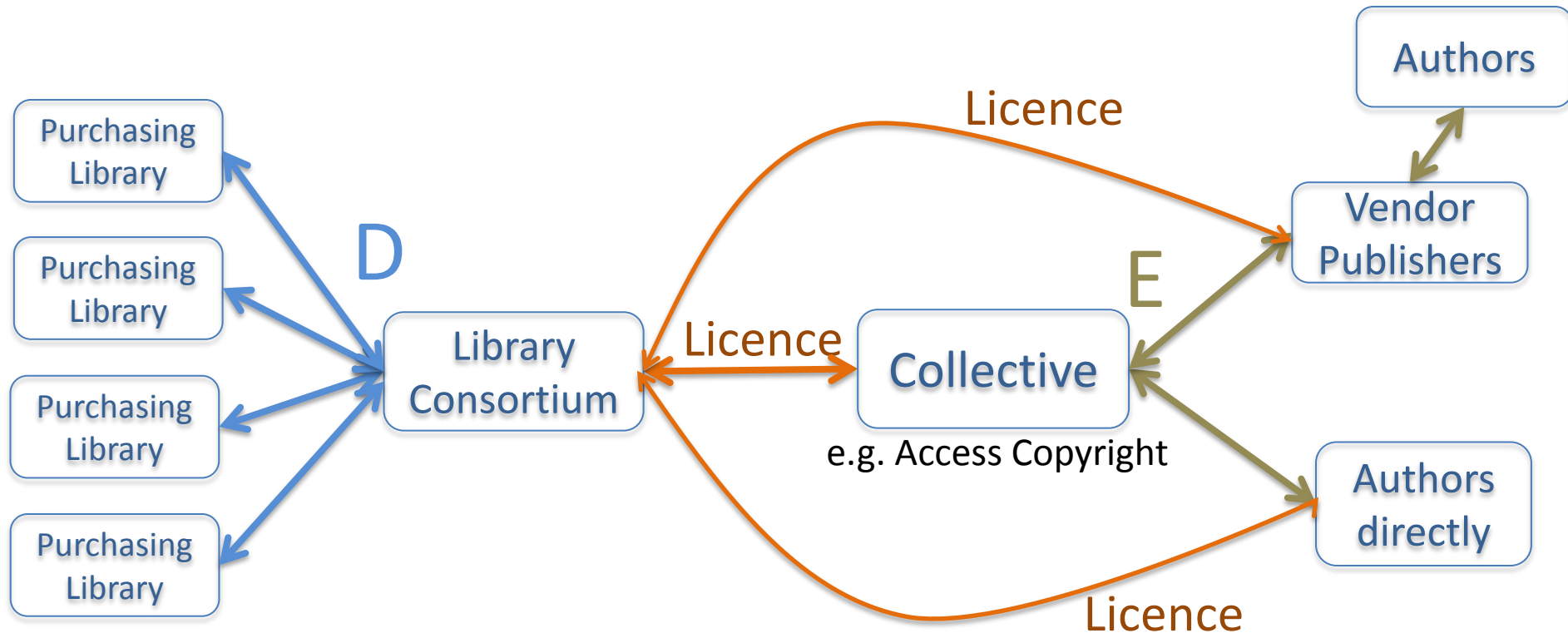
Historic & Continuing Consortia Model



Possible Complex Model for Print and Non-Print, Digital or Non-Digital

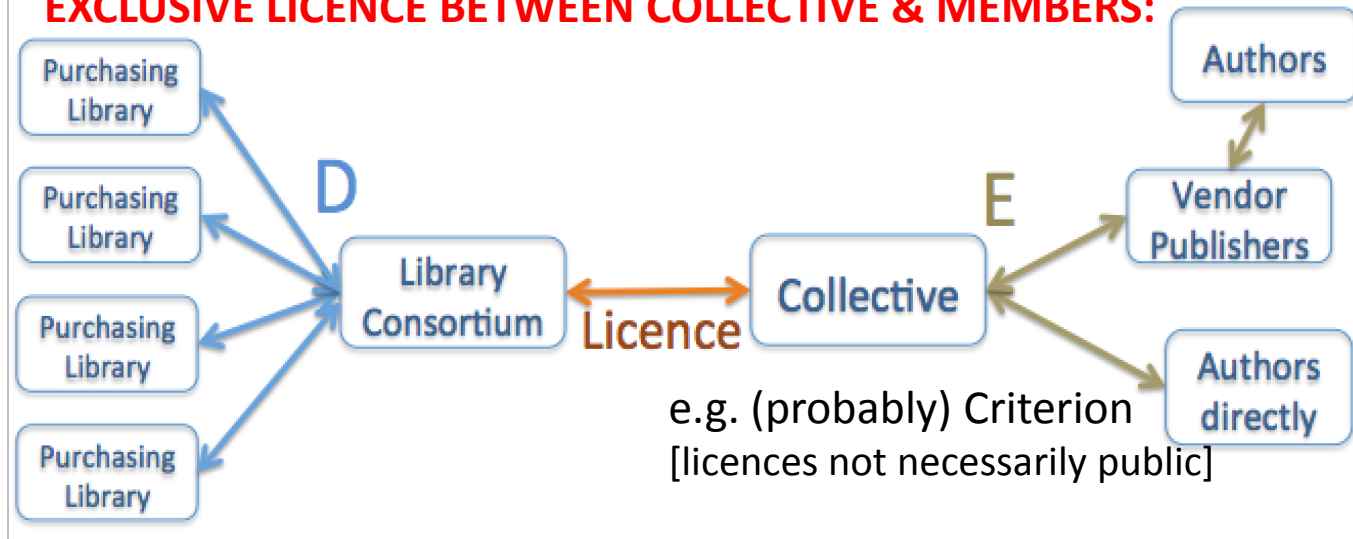


Examples of Possible Contracts available to Libraries or Consortium as a result of the existence of Non-exclusive contracts (“E”) between a Collective and its Vendor Publishers (or Authors):

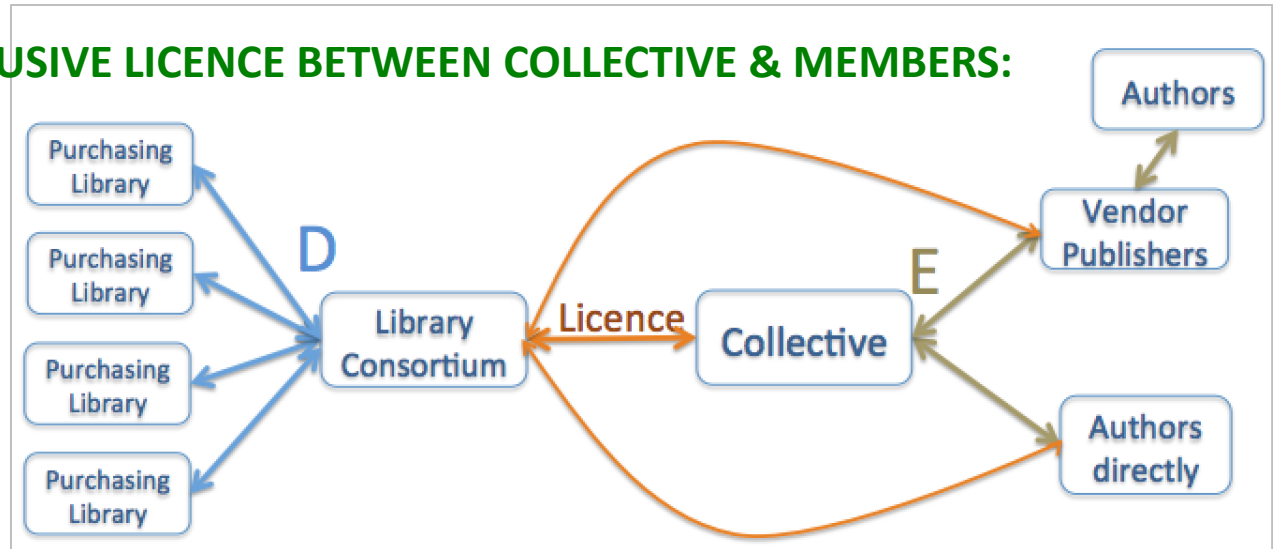


Contrasting the alternative Contracts possibly available to Libraries and Consortia as result of Non-exclusive licences between a Collective and Its Vendor Publishers (& Authors) [BOTTOM DIAGRAM] and the single Contract option available (dealing with the Collective) if a Collective has Exclusive licences from its Vendor Publishers (& Authors) [TOP DIAGRAM]

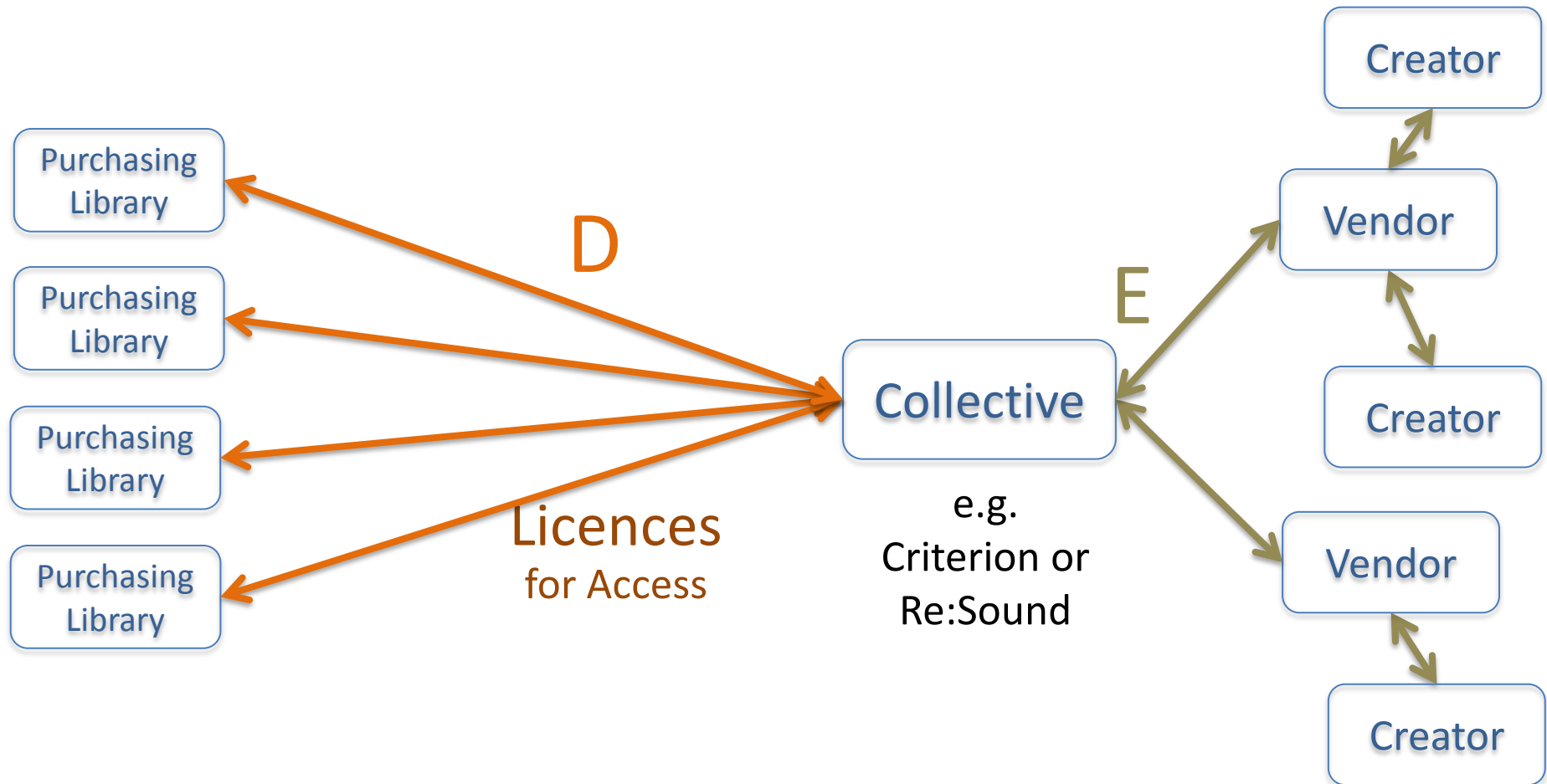
EXCLUSIVE LICENCE BETWEEN COLLECTIVE & MEMBERS:



NON-EXCLUSIVE LICENCE BETWEEN COLLECTIVE & MEMBERS:



Actual Current Digital Model for Non-Print



- A Deal is NOT a Deal unless and until signed by the legally authorized representative(s) of each party;
- A “model licence” is not actually a licence at all;
- There is no reason to assume that any offer put to you is non-negotiable: there is no reason not to “push back” for better terms;
 - Negotiation does not *make* a deal happen: it just moves the process along until there is a crystallization of the *potential* deal – then each proposed party to the deal goes away and selfishly and confidentially considers the terms on offer and unilaterally decides whether or not to sign... if any one party decides not to sign, there is no deal... If each party does actually sign, then – and only then – is there a deal.

Ontario Colleges Library Service (OCLS)

Model Licence

- Development began spring 2013-completed fall '13 – approved by Heads of Libraries and Learning Resource Centres (HLLR) in 2014
- Goals:
 - Reflect needs of Ontario Colleges
 - Safeguard fair dealing rights
 - Address AODA concerns
 - Gain an awareness of the libraries priorities for the model licence, including non-negotiable items
 - Increase the permitted uses of electronic resources for the libraries' authorized users

OCLS Model Licence Review

The model licence went through 4 drafts:

- Draft 1: Review by model licence working group
- Draft 2: Legal review – legal opinion only for form of contract not the value of the deal
- Draft 3: Review by the HLLR AODA Research Panel
- Draft 4: Review by the HLLR Executive

Ontario Colleges Library Service (OCLS) Model Licence Terms

HLLR Copyright Interest Group provided OCLS with a set of priorities for negotiating licence agreements on behalf of the colleges.

Three categories of priority terms and conditions were identified:

1. **Essential: absolutely necessary;**
2. **High: preferred; of great importance; willing to negotiate in order to obtain**
3. **Moderate: Ideal but negotiable**

What to negotiate (or influence your negotiators to negotiate): what is important to your institution and users?

- **Canadian *Copyright Act***

Since contracts do not have to adopt the laws of any particular jurisdiction within their terms, you need to negotiate to have Canadian *Copyright Act* apply in a licence...

- **Accessibility legislation**

Since the federal *Copyright Act* overrides any provincial law purporting to deal with copyright matters, provincial accessibility efforts will not be effective to the extent they differ from the *Copyright Act* – unless the provincial requirements are inserted in a contract (because contracts can override the Copyright Act) ...

- **Price**

Both the price and the currency in which it is to be paid...

Canadian *Copyright Act*

- **Canadian *Copyright Act***
 - For reasons of keeping down costs of potential litigation AND gaining access to Canadian concept of Users' Rights (Fair Dealing)
- **Jurisdiction**
 - Make sure jurisdiction in your own province

OCLS Model Licence – Priority Terms & Conditions

The following table contains the priorities identified by the HLLR Copyright group in each category:

Category	Section
Essential	3.1 Access and use [...]
	3.5 Use in academic research
	3.6 Fair dealing (Copyright)
	3.7 Accessible Formats (AODA)
	3.8 Coursepacks (copyright)
	3.1 Federated search
	3.12 Training and marketing
	5.1 Upon the effective date [...]
	5.3 Notice of changes
	5.6 Confidentiality
	8.11 Governing Law (Ontario/Canadian jurisdiction)
High	3.2 Persistent links
	3.3 ILL (copyright)
	3.4 Scholarly sharing
	3.11 Data mining
	5.4 Notice of DRM
	5.5 Notice of watermarking
Moderate	3.9 Author's rights
	5.2 Downtime

Accessibility Legislation

- Ontario
 - Accessibility for Ontarians with Disabilities Act (AODA) – 2005
- Manitoba
 - Accessibility for Manitobans Act (AMA) – 2013
- In Progress:
 - British Columbia
 - Nova Scotia
- No legislation currently contemplated in Newfoundland & Labrador, Prince Edward Island, New Brunswick, Quebec, Saskatchewan, Alberta

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Price including negotiation

- With the falling Canadian dollar negotiating payment in \$CAD can sometimes work.
- Some vendors, especially new ones, might be open to payment in \$CAD to get you on board if you negotiate with them and/or through your consortia
- **Make sure the \$CAD payment is in writing**
 - Note: will most likely have to pay in US \$ upon renewal unless this can be negotiated otherwise

Price – Consortial renewals

- With consortial arrangements renewal timeline may be past next fiscal year (not having to pay for it the upcoming year) – take advantage of this opportunity
- Will have to pay more for it (1.5 x for ex) but benefits can outweigh increased cost
- For a new database this gives Faculty/students time to use it and library staff time to assess stats and receive feedback
- With this, there is then time in that year to see if you want to renew and thus budget for it the following year

Your role

- **Influencing your management** with suggestions about how and with whom to negotiate deals – and on what basis...
- **Influencing your consortium** with suggestions about how and with whom to negotiate deals – and on what basis...
- **Participating directly in negotiations...**

THANK YOU: ...QUESTIONS?

Thanks to:

Corinne Abba, George Brown College

Meaghan Shannon, Fanshawe College

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Cathy Maskell, University of Windsor

OCLS Model license can be obtained by request to Jason Bird: jason.bird@saultcollege.ca