Using MoU’s to Build Partnerships without Pressure

Will Cross, NCSU Libraries
ALCTS Webinar
February 10, 2016
“The Librarian/Lawyer in his natural habitat”
Outline

✓ What is an MoU
✓ Why Use an MoU
✓ Drafting Practices
✓ Case Studies:
  ✓ TRLN’s “Single Copy” Program
  ✓ Library of Michigan & Minnesota’s “Regional Repository” Agreement
✓ Questions
Memorandum of Understanding

• Mutually accepted expectations between parties who intend to work together towards a shared objective

• Intention that the agreement not be legally-binding

• Money (generally) doesn’t change hands
A Continuum of Promises

Legally Binding
- Faustian Bargain
- Formal Contract

Soft Law
- Memorandum of Understanding/Agreement (guidelines for behavior)
- Letter of Intent/Comfort (vague unenforceable terms)
- Record of Discussion/Meeting ("here's what was said")

Reputation
- Gentleman's Agreement
- Scout's Honor
- Pinky Swear
Why Have an MoU?

• **Agreement before the Agreement:** Expression of intention early in negotiations, forces people to come to the table

• **To Avoid the Lawyers:** Agreement between parties with differing legal regimes or lots of red tape

• **Because We Have To:** Helpful for administrative agencies, government partnerships, to comply with or sneak around Uniform Commercial Code definitions, and other technical requirements

• **Because Contracts Make People Uncomfortable:** Sometimes you want a contract but don’t want “a contract”
A carefully-crafted MoU for delicate negotiations.
A Hastily-Scrawled MoU for my Friday Night Bar Trivia Team
A Slightly-Too-Cute MoU for this Webinar

This 2/10 ALCTS webinar is designed to teach participants about MoU’s

Speaker (Will) agrees to:
• Present useful information
• Use some images in his slides to help keep you from falling into a coma
• Wrap it up in plenty of time for the Q&A session that everyone’s really here for anyway

Listeners (you) agree to:
• Pay attention even though I can’t see what you’re doing
• Ask good questions that help you understand the issues
• Say nice things about Speaker (@tceles_b_hsup) and ALCTS (@ALCTS) on twitter
How to Make a Contract

• **Offer** - “I promise to . . .”

• **Acceptance** - “Okay, then I’ll . . .”

• **Consideration** - Everybody gets something

• **Intention/Mutuality** - Agreement

“All of these people have legally-enforceable promises. Only one has the power of the Dark Side”
Contract Principles to Avoid
(Unless you want a Contract by Another Name)

• Specific legal language or terms of art

• One Solution:

“This document is a Memorandum of Understanding and is not intended to create binding or legal obligations on either party.”
Contract Principles to Borrow

• Intention of the parties

• Clarity about why the agreement is being made

• Document as a failsafe, not a trap

• “Four corners” of the contract
How to Draft an MoU
Don’t Trust “Magic Words”

- Technical meaning obscures intention
- Makes it look more like a contract
- Talk to each other like humans
MoU’s are a Team Sport: Know Who Needs to Be Involved

Counsel’s Office?

Administration?

Lawyer in the Library?

THE PEOPLE ACTUALLY DOING STUFF?
Memorandum of Understanding Template

Heading

Between

1--------- (1st party)

And

2--------- (2nd party)

Aim / purpose of the agreement

[...]

Some guiding terms:

* Desiring to strengthen profession relations between libraries ....
* To facilitate their operation in ....
* Pursuant to the desire to strengthen the existing cordial relations between the parties ...
* To enhance their cooperation in the areas of ....
* Having agreed to harmonize the interests and targets of the two parties ....
* Building partnerships is an immense solution to emerge energy and resources to achieve ....
* For their mutual knowledge of achievements and perspectives of library science development ....

The parties have agreed on the following:

[...]

“Legal capability clause”

* The Parties confirm that the articles they drafted and the legal capacity of both of them

... But Don’t Stop There!
Welcome to Saul Bellow Land!
Anatomy of an MoU: 5 W’s and a Few More

• Who?
• What?
• Where?
• When?
• Why?
• How?
• How much?
• What if?
Anatomy of an MoU: 5 W’s and a Few More

• Who is involved?
• What are we trying to do?
• Where is this taking place?
• When are we starting and what deadlines exist?
• Why are we doing this in the first place?
• How will we get it done?
• How much are we willing to commit?
• What if it doesn’t work out?
Creating a Collaborative Collection Across Libraries
“Creating the Triangle Research Libraries Network”
http://www.trln.org/about/mou.htm

• **Who:** NCSU, Duke, UNC-Chapel Hill, NCCU Libraries
• **What:** Create a partnership for library collaboration
• **Where:** Within each library and across the Research Triangle
• **When:** Starting as soon as practical and ongoing
• **Why:** Efficiency, meet shared aims
• **How:** Strategic partnership
• **How much:** Annual dues and time commitment
• **What if:** We can reconsider terms or withdraw
“Creating the Triangle Research Libraries Network”

MEMORANDUM OF UNDERSTANDING
CONCERNING THE
TRIANGLE RESEARCH LIBRARIES NETWORK (TRLN)
A cooperative endeavor of Duke University, North Carolina Central University, North Carolina State University, and The University of North Carolina at Chapel Hill

HISTORICAL NOTE
Cooperation among the academic research libraries of the Research Triangle dates to 1933 when the presidents of the University of North Carolina and Duke University created the Committee on Intellectual Cooperation. Library cooperation became the strongest and most enduring component of the 1935 Program of cooperation of the Universities. This cooperation later expanded to include the libraries of North Carolina State University and has now grown to incorporate North Carolina Central University. For most of its history, the cooperative programs consisted of coordinated collection development and resource sharing.

Library cooperation developed and was adopted in 1957 when the Triangle Universities Library Cooperation Committee (TULCC) was formed to establish a support system for resource sharing. The name Triangle Research Libraries Network was adopted in 1984 and revised in 1997. They emphasized the systems nearly defining its purpose as “to develop and maintain a network of online catalogs and other automated systems.”

This memorandum of understanding incorporates North Carolina Central University into TRLN for the first time. It also broadens the purpose of the network to include all the traditional programs of cooperative collection development, resource sharing, and technical innovation with a focus on the end goal of collaboration for leveraging institutional resources to improve access to information for our users in a technologically sophisticated environment.

I. MISSION
The Triangle Research Libraries Network is a collaborative organization of Duke University, North Carolina Central University, North Carolina State University, and the University of North Carolina at Chapel Hill, the purpose of which is to marshal the financial, human, and technological resources of the research libraries through cooperative efforts in order to create a rich and unparalleled knowledge environment that furthers the universities’ teaching, research, and service missions.

II. MEMBERSHIP
A. Member Institutions
The member institutions of TRLN are Duke University, North Carolina Central University, North Carolina State University, and the University of North Carolina at Chapel Hill.

1. Requirements for Membership
   a. Be institutions of higher education.

b. Have a library.

c. Consent to this Memorandum of Understanding as attested by the ratifying signature of their president or chief executive officer.

d. Assume fiscal responsibility for support of TRLN. Such fiscal responsibility includes the assessment of annual dues, proportional costs of joint projects and other assessments as shall be mutually agreed upon.

2. The Governing Board may recommend the addition or removal of member institutions to the chief executive officers of the member institutions.

3. Continuance of membership requires that all annual dues and assessments be remitted within the current fiscal year and on or before the next annual assessment.

4. The chief executive officer of a member institution may withdraw his/her institution from membership in TRLN by written notice to the chief executive officer of the governing member institution. Such notice must be given at least one year in advance of the effective date or longer, as may be required by the particular TRLN contractual obligations with third parties.
III. GOVERNANCE

A. Governing Board.

1. Responsibilities. The ultimate authority within TRLN is the Governing Board. The Governing Board is responsible for retaining qualified executive leadership for TRLN, establishing policy, approving operating budgets, overseeing assets, and setting strategic directions.

2. Membership. The membership of the Governing Board consists of the Presidents of the member institutions, the University Librarians from each member institution, and the TRLN Executive Director, ex officio.

3. Chair of the Governing Board is a provost of a member institution. The chair rotates among the member institutions on a two-year term.

4. Meetings.
   a. Annual Meeting. The Governing Board meets at least annually, at such time and place as the chairperson of the Board may determine, giving reasonable written notice of time and place to the members of the Board.
   b. Special Meetings. Special meetings may be called by the chairperson upon written request from two or more members of the Board specifying the business to be transacted at the meeting.
   c. Quorum. A quorum consists of a majority of members of the Board, including one from each member institution.

B. Executive Committee.

1. Responsibilities. The Executive Committee engages in planning, conducts mid-year budget reviews, plans the annual board meeting, and makes decisions as necessary between meetings of the full Board.

2. Membership. The membership of the Executive Committee consists of the other library members of the Governing Board and the TRLN Executive Director, ex officio.

3. Chair. The chair of the Executive Committee shall be a library director from the same member institutions as the chair of the Governing Board. The chair rotates among the member institutions on a two-year term.

C. Advisory Council.

1. Responsibilities. The Advisory Council identifies and studies issues of interest to the directors and provides advice and counsel to the Executive Committee concerning TRLN planning and operations.

2. Membership. Composition of the Advisory Council is defined in the addendum.

D. Decision Making. The Governing Board and Executive Committee proceed in decision making by unanimous consent of the members in good standing. When formal votes are taken, each member institution in good standing has one vote, and no project action shall be undertaken nor any policy adopted without unanimous consent of the members in good standing.

IV. STAFF

A. Central Staff. TRLN has a central staff to support cooperative endeavors of the member institutions. This central staff consists of an Executive Director and such other regular staff as may be necessary to accomplish its goals. All permanent and temporary staff are under the direction of the Executive Director.

B. Temporary Staff. TRLN also employs temporary project staff as is appropriate to pursue funded projects. Member institutions may assign staff from time to time as appropriate for projects that may be underway.

V. HOST INSTITUTIONS AND OTHER SUPPORT

A. Host Institution. TRLN is hosted by one of the member institutions, hereinafter designated as the host institution.

1. Responsibilities of Host. The host institution provides space for TRLN staff and operations and certain kinds of clerical and administrative support (e.g., purchasing operations and accounting services) on terms agreeable to the Governing Board and the host institution.

2. Term. The period for serving as a host institution shall be a minimum of three years and may be re-negotiated for additional three-year periods with the mutual consent of the Governing Board and the member institution that is serving to be host.

B. Other Support. Upon agreement, any member institution may serve TRLN by housing projects, supplying services, or serving as contact signatories.

VI. AMENDMENT AND REVIEW

A. Amendment. This Memorandum of Understanding may be amended by unanimous approval of the chief executive officers of the member institutions.

B. Review. At a minimum, the Governing Board shall review this Memorandum of Understanding every five years. The Governing Board shall submit to the chief executive officer for their consideration any suggested amendments that it deems worthy.

Originally signed [1989]

Name: D. Martin, President, Duke University

Julius L. Chambers, Chancellor, North Carolina Central University

Larry K. M. Johnson, Chancellor, North Carolina State University

Paul Harris, Chancellor, University of North Carolina at Chapel Hill

ADDITION OR WITHDRAWAL OF LIBRARIES

ADVISORY COUNCIL

The Advisory Council is comprised of four representatives from each member institution, the chairs of the programmatic councils, and the TRLN Executive Director. Each Advisory Council Representative will be appointed by the University Libraries from the member institution, should be the chief librarian or someone with similar authority at the member institution, and should be selected to provide key libraries on the campuses whenever possible. The Advisory Council meets at least annually. The TRLN Executive Director is the ex officio member, and the TRLN Executive Director will act as an ex officio member of the Advisory Council, and will regularly communicate the agenda and minutes of the meetings of the Advisory Council. The Executive Committee will endeavor to take actions in accordance with the wishes of the Advisory Council as needed for broad institutional support.

COMMUNITY SUPPORT

Compliance with the TRLN Agreement and the TRLN Executive Director's responsibilities under the TRLN Agreement shall be ensured through the coordination of any joint committees. TRLN will provide ongoing support to member libraries, and the TRLN Executive Director will coordinate the activities of member libraries.

GOALS

TRLN leverages resources to accomplish the following goals:

- to extend the scope of information resources and services available to our users through libraries and campus networks
- to create new library and information services
- to make information accessible to users among member institutions in a convenient, timely, and equitable manner
- to develop and pursue strategic partnerships that enhance our ability to deliver information and services
- to remain current in the trends that shape the nature and accessibility of library and information services

For more information, please refer to the TRLN Executive Director.
TRLN’s “Single Copy” Program

• **Who:** NCSU, Duke, UNC-Chapel Hill, NCCU
• **What:** Create a partnership for shared collections
• **Where:** Within each library and across the Research Triangle
• **When:** Starting as soon as practical and ongoing
• **Why:** Efficiency, cost-savings, build on collection strengths
• **How:** Strategic partnership that leverages strengths
• **How much:** As required by law
• **What if:** We can reconsider
TRLN Single Copy Program
Memorandum of Understanding

This Single Copy Memorandum of Understanding ("MOU") is entered into by and among the four member institutions of the Triangle Research Libraries Network (TRLN): Duke University, North Carolina Central University, North Carolina State University and the University of North Carolina at Chapel Hill ("Participating Institutions"), and shall be effective from September 1, 2008 until terminated in writing by the Participating Institutions.

Whereas, the Participating Institutions seek to enter into an agreement to conserve valuable library resources and support service to all patrons of the Participating Institutions by reducing unwanted duplication of, and the duplicative effort and long-term costs to shelf and care for, print materials that are not often used but have enduring value;

Whereas, the Participating Institutions seek to create a shared collection of selected print materials ("Single Copy Program") that may be more complete than any of our separate collections,

Whereas, the Participating Institutions seek to ensure long term access to a shared collection by designating selected print materials for permanent retention.

NOW, THEREFORE, in order to enact these goals by creating a Single Copy Program, the Participating Institutions enter into the following agreement that outlines the rights and obligations of the Participating Institutions and provides a framework to guide development of procedures:

A. Any of the collections of the Participating Institutions may identify and offer their materials for inclusion in the Single Copy Program ("the Materials"). Processing of materials offered by a library for the Single Copy Program shall be carried out by the TRLN Single Copy Operations Committee (with a representative from each separately administered TRLN library for communication purposes) under the direction of the TRLN Collections Council. Materials included in the Single Copy Program shall remain the property of the library that deposits the actual copy of the work into the Single Copy Program.

B. Libraries of the Participating Institutions hereby agree to the following service standard: To the extent practicable, access to Materials shall be reciprocal, perpetual (subject to paragraph H below) and equal for all faculty, staff and students of the Participating Institutions. Patrons of each participating institution will be treated as patrons of the owning institution, consistent with TRLN practice, for purposes of access to the materials subject to this agreement. When Materials enter the Single Copy Program, they retain their existing circulation and loan status as defined by the contributing library.

Within TRLN, borrowing and lending of the Materials will be in accordance with the "Memorandum of Understanding Concerning TRLN Interlibrary and Document Delivery Services."

C. Libraries of the Participating Institutions shall cooperate in selecting the storage facilities for the Materials, and may agree to store the Materials in more than one location. On-campus library shelving is an acceptable storage location. Regarding processing access to the Materials, this MOU does not supersede any existing or future agreements between Participating Institutions. The mere fact that materials are moved to a single location shall not enter them into the program. Materials in the Single Copy Program will only those that are identified as Single Copy by the contributing library and documented by the Single Copy Operations Committee according to its established procedures.

D. Volumes designated for the Single Copy Program are not subject to page-by-page collation and the Single Copy Program is not creating a print archive of lost reprints. However, libraries contributing volumes should review them for completeness of content and easily observed damage before contributing them.

E. Libraries will cooperate on cataloging procedures for the Single Copy Program to ensure uniformity in documenting the status of titles and presentation in the TRLN union catalog or other registries.

F. Each library shall be responsible for all costs and expenses it incurs in establishing for the Single Copy Program and shall be responsible for all costs incurred in maintaining and servicing the Materials it deposits into the Single Copy Program.

G. The Single Copy Operations Committee, under the direction of the Council, will cooperatively agree upon assessment methods for the Single Copy Program and will develop statistics about titles entering the Program.

H. To the extent permitted by North Carolina law, a library may withdraw any item from the Materials only if an authorized representative from each Participating Institution, consulting with appropriate campus entities, approves of the withdrawal in writing. Such approval shall not be unreasonably withheld.

I. Each library shall retain the right to withdraw from its collection any work(s) that is duplicative of Materials in the Single Copy Program or any work(s) that has not been designated for inclusion in the Single Copy Program. Similarly, each library retains the right to keep or store in its collection any work(s) that is duplicative of Materials in the Single Copy Program, subject to independent campus or facility-based non-duplication policies which this MOU does not interfere with or supersede.

J. Risk of Loss -- In the event that material deposited in the Single Copy Program in accordance with this agreement is damaged or lost, the depositing library shall use reasonable efforts to repair or replace the damaged or lost material. The depositing library may secure agreement from partner libraries not to replace damaged or lost material in the event that replacement copies are either unavailable or electronic archiving solutions are deemed sufficient for those volumes.
A Partnership For Regional Depository Services
“Establishing the University of Minnesota Libraries as the Regional Depository Library for Michigan”
https://www.lib.umn.edu/govpubs/memorandum-2013

• **Who:** University of Minnesota Libraries and Library of Michigan
• **What:** Store and make accessible depository materials
• **Where:** The state of Michigan
• **When:** Ongoing
• **Why:** To meet statutory requirements
• **How:** Storage, copying, and other services
• **How much:** As needed
• **What if:** Revisit annually
Establishing the University of Minnesota Libraries as the Regional Depository Library for Michigan

I. PURPOSE
This Memorandum of Understanding (MOU) regarding regional depository library responsibilities is being executed by and between the University of Minnesota Libraries (UMN) and the Library of Michigan (LM). It reflects the parties' understandings regarding the terms and conditions under which UMN accepts Federal Depository Library Program (FDLP) regional service responsibilities for selective Federal depository libraries in Michigan.

II. BACKGROUND
The Library of Michigan, by state statute, has responsibilities to enable cooperative arrangements and coordinate library services for the state of Michigan. It serves as the official state library agency. LM has interest in ensuring that libraries throughout the state of Michigan are provided services in support of the FDLP resources. The Library of Michigan served as a regional depository for federal documents until October 3, 2011, at which time it relinquished its regional depository designation. It continues to participate in the FDLP as a selective depository. The University of Minnesota libraries have been a depository library since 1967 and was designated a regional depository library in 1963. In 1988, the UMN accepted the responsibility of providing regional depository services for the selective depository libraries in South Dakota.

III. SCOPE
This agreement applies to the responsibilities undertaken by the UMN to serve the selective depository libraries in Michigan.

IV. TERMS OF AGREEMENT

A. The Library of Michigan agrees to:
1. Facilitate the coordination of depository library services in Michigan through mechanisms and facilities that support communication and events associated with FDLP services within Michigan.
2. As the state library, LM will continue to provide services and resources related to the state of Michigan as a Selective Depository Library.
3. Develop federal documents collections of primary relevance to the state of Michigan and coordinate its federal documents collections in the context of the UMN regional depository and its services.
4. Share its federal documents collections through the network of interlibrary lending services within Michigan.

B. The UMN agrees to:
1. Fulfill the responsibilities of regional depository libraries as laid out in Chapter 19 of Title 44 of the U.S. Code.
2. Retain at least one copy of all Government Publications either in print or microform as part of the UMN Regional Federal Depository Library collection.
3. Provide copies through the UMN interlibrary loan services of tangible documents to the depository libraries of Michigan requesting a copy.
4. Provide Reference Services through email, online chat, and telephone.
5. Provide education and training opportunities to all staff within Michigan depository libraries through online video conferencing. These opportunities include quarterly regional meetings, recurring new depository librarian training, one-time training on depository management issues, and special interest training on specific subject topics (i.e., elections, census) and specific tools (e.g., American Factfinder). When possible, in-person training within Michigan will also be offered.
6. Assist depository libraries in the disposal of unwanted government publications under the UMN disposal guidelines.
7. Provide support for depository management through phone calls, email, chat, video conferencing, virtual training and education sessions, the UMN website, and site visits.
8. Ensure that multiple forms of ongoing communication are maintained between UMN and depository libraries in Michigan including, but not limited to, listservs, quarterly regional meetings, postal mail, individual email, and telephone.
9. Support the UMN Regional Librarian in visiting the state of Michigan once a year to attend an annual meeting of depository libraries. This annual meeting will be held in different regions of the state with the expectation that the Regional Librarian will be able to conduct site visits with depository libraries in that region of the state.
10. Coordinate the revision of the Minnesota State Plan for Federal Depository Libraries to reflect the changes brought about by this agreement.
11. Create a Regional Depository Library Advisory Group to ensure the needs of all depository libraries within the region are met. This Advisory Group will:
   - Provide input into the services offered by UMN.
   - Work with UMN in developing education and training opportunities for the region.
   - Work with UMN in the revision of the State Plan to ensure it remains an

When

What if

How

Why & Who

Where
A Great Place
to Start your
own MoU:
UCLA’s
Rights Toolkit

MEMORANDUM OF UNDERSTANDING

The University of California, Los Angeles (UCLA) and are linked by common academic interests and seek to develop collaborations and exchanges in fields of shared interest and expertise. The activities undertaken pursuant to this Memorandum of Understanding (MOU) are based on a spirit of cooperation and reciprocity that is intended to be of mutual benefit to both parties.

1. Purpose

This Memorandum of Understanding (MOU) serves as a written understanding of agreed-upon principles between the University of California, Los Angeles on behalf of its University Library and [institution or governmental entity] concerning a set of general academic objectives.

This is a non-binding agreement and is intended to clarify the nature and extent of the complementary activities that might be undertaken for the mutual benefit of the two parties. Each institution will be responsible for managing its own costs.

Commitments of specific institutional resources, personnel, space, facilities, or any other academic or intellectual activities may be contemplated hereunder but are beyond the scope of this MOU.

To the extent that the implementation of any agreed-upon activity requires a commitment of resources, personnel, credit-bearing coursework, or intellectual property, a supplementary agreement must be negotiated and approved by the two parties before work on any of the projects can commence.

2. Objectives, Scope, and Major Activities

Both institutions agree to encourage the development of the following types of activities (please check all that apply):

- Visitors and informal exchanges of librarians, faculty, scholars and administrators in specific areas of education, research and outreach.
- Organize joint conferences, symposia, or other scientific meetings on subjects of mutual interest.
- Exchange of academic information and materials.

3. Responsibilities of the Parties

The two parties recognize that the implementation of any agreed-upon activity will depend upon the interests and expertise of the individuals involved and the availability of financial resources, space and other resources. Accordingly, the implementation of any exchange and cooperative program based on this MOU shall be separately negotiated and determined between the two institutions. It is further expected that both parties will be compliant with all applicable State and federal laws and regulations and University policies.

4. Duration and Option to Amend, Extend or Terminate

This MOU will be effective when signed by both parties. The agreement will remain in effect for two years from the signature date, below, and may be renewed or amended by mutual agreement of the parties. The parties agree to periodically review the activities undertaken and the progress made and to consult concerning amendments, renewal or termination of this MOU. Either party may terminate this MOU at any time by providing written notice of such termination to the other party.

5. General Terms

This MOU is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by either party, its officers, employees, or agents against the other party, its officers, employees, or agents.

Nothing in this MOU obligates either party to commit or transfer any funds, assets, or other resources in support of projects or activities between the two parties.

Neither party will use the name of the other, either expressly or by implication, in any publicity, solicitation or advertisement without the express written approval of the other party to this MOU.
Final Thought

STOP

COLLABORATE AND LISTEN
Questions?
Sources

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