

PCC TASK GROUP ON LEGAL STATUS

Report to the PCC Steering Committee

September 26, 2018

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INTRODUCTION

The present nature of the Program for Cooperative Cataloging as an organization has come under scrutiny over the past few years as the PCC explores new and innovative strategic directions. While the PCC has been an effective cooperative effort for decades, it is not a *legally recognized* body. The lack of legal status has been an obstacle to the PCC's efforts to establish official relationships with other entities for the purpose of developing and executing new initiatives. Specifically, the PCC has found it difficult to enter into partnerships with national libraries and other organizations (including commercial utilities), to conduct research requiring access to sandbox technology environments, and to participate in Mellon and similarly funded projects.

To address these issues, the PCC Steering Committee formed this Task Group on PCC Legal Status to investigate the possibility of the PCC's becoming a legally recognized nonprofit entity that can act on its own. Specifically, the Task Group was charged to:

1. Investigate how similar organizations meet these challenges.
 - a. For those that are legally recognized entities, what benefits and drawbacks are apparent?
 - b. For those that have not become legally recognized entities (e.g., Ivy Plus), what reasons drove that decision?
2. Evaluate the pros and cons of specific models for the PCC becoming a legally recognized entity.
 - a. Consider implications for financial accounts, governance structures, record-keeping.
 - b. Consider implications for the PCC's relationships with the Library of Congress, OCLC, ALA, and others.
3. Make recommendations to the PCC Steering Committee.
 - a. Rank options for the PCC's legal status and provide rationales.
 - b. Outline next steps.

(See Appendix A for the complete charge.)

The Task Group's inquiry included exploring in detail the administrative requirements of the PCC, looking into the viability of establishing a separate stand-alone 501(c)3 organization, and investigating affiliation with other 501(c)3 organizations. This report describes the Task Group's process, conclusions, and recommendations to the PCC Steering Committee.

INVESTIGATION

Understanding PCC Goals and Objectives

The Task Group began its work by reviewing PCC documents to understand current practices of the cooperative. The Task Group interviewed the PCC Steering Committee for a fuller picture of the needs of the PCC not currently being met in the existing structure. Beacher Wiggins was interviewed to acquire an understanding of the historical development of operations. Mr. Wiggins is the LC Director for Acquisitions & Bibliographic Access and has served in various LC liaison roles to the PCC over the past 20 years. Information regarding OCLC's financial support was requested from and provided by Cynthia Whitacre, Manager, WorldCat Quality & Partner Content Department, OCLC, Inc.

Key findings from the interviews with the PCC Steering Committee and Mr. Wiggins included:

- The need for PCC to have financial independence from LC. LC is a federal agency, which means that PCC expenditures are constrained by government regulations.
- The lack of signatory authority for the PCC for grants and other potential projects. LC is prohibited from signing agreements for the PCC. While institutional members can act on behalf of PCC in signing agreements, there is no guarantee that they will do so when the need arises. If liability indemnification is required, it is unlikely that a member institution will sign on behalf of the PCC.
- A desire for infrastructure to support, for example, technology sandboxes for research and exploration, or grant writing. While some infrastructure support has been provided by institutional members, this support cannot be counted on routinely and is not without cost.

Mr. Wiggins indicated that LC is supportive of the initiative to investigate independent legal status for the PCC, and he confirmed that LC does not wish to sever its relationship with the PCC and would expect to continue to play a secretariat role. He believes that, aside from the financial issues, PCC can do what it needs to do for the most part, adding that whatever solutions are recommended, they will need to be reviewed by LC Legal Counsel.

With this background information, the Task Group began to explore models that would meet the PCC's financial and administrative needs. The first steps in this process were to identify cognate organizations that have independent legal status and to gather details about their administrative models, size, and scope. Twenty-two organizations were identified (see Appendix B), of which nine are 501(c)3 entities, seven are affiliated with other organizations, and six fit into an "other" category. This list was used to identify six organizations for telephone interviews.

Review of Viability of Non-Profit Status

The PCC Steering Committee suggested in its charge that the Task Group investigate the viability of PCC's seeking non-profit status. As pointed out in the report submitted and discussed at the Steering Committee meeting held at the 2018 ALA Annual Conference in June (see Appendix C), establishing a stand-alone 501(c)3 organization would be a financial and organizational drain on PCC resources. The cost of doing so is substantially beyond PCC's capabilities. The Task Group suggested, and the PCC Steering Committee concurred, that, instead, affiliation with an already established 501(c)3 organization is a preferable and more sustainable alternative.

Investigation Into Affiliation With Other 501(c)3 Organizations

The Task Group selected and interviewed six organizations/institutions to ascertain whether there were opportunities for the PCC to affiliate with a 501(c)3 organization to realize the financial, administrative, and technical support desired: the Center for Research Libraries (CRL), LYRASIS, and OCLC, along with the libraries of Indiana University, Northwestern University, and Yale University. As a result of these conversations, the Task Group believes that the PCC could, in fact, find an administrative home with one of these or similar organizations should they wish to do so.

There are organizations in the library community that do provide financial and administrative support services for other organizations: two of those interviewed expressed a high degree of interest in providing such services for the PCC (CRL and LYRASIS). OCLC does not currently offer such services, but might consider doing so after further discussion. The Task Group interviewed the libraries mentioned above in order to gauge whether such services might be possible through their institutions. The hurdles are much higher for universities because of their internal structures and processes. That said, PCC's interest in a technology sandbox could be accommodated by several of these organizations/institutions.

Any organization or institution providing such services would require a written agreement, along with approval by a board or other governing body. It is likely the services desired would require some payment by the PCC, though OCLC did express its hope not to have to charge a fee, given their current investment of staff, time, and financial resources in the PCC.

If the PCC were interested in pursuing such an affiliation, developing an RFI and/or RFP specifying requirements and expectations would be an important first step. There are additional organizations that could be sent such an inquiry beyond those interviewed by the Task Group. Many of these are included in the list of organizations previously mentioned (see Appendix B). The Task Force has also provided a sample RFP (see Appendix D).

RECOMMENDATIONS

The PCC Task Group on Legal Status proposes three potential options to address the current and future needs of the cooperative:

1. Affiliate with an established 501(c) organization.

It was clear from the interviews we conducted that there are opportunities for the PCC to become affiliated with another 501(c)3 organization. Although not out of the question, this is less likely to be a university, unless that university has a history of providing such support to external organizations and the structures in place to do so (e.g., the University of Michigan and its relationship with HathiTrust).

The Task Group's research suggests that a cognate organization would be more able to support the PCC without the structural challenges that are likely to occur with a university. Cognate organizations would be freer to adjust their own services to

accommodate the PCC. The ones interviewed -- CRL, LYRASIS, and OCLC -- all professed interest in further discussions. Each has the ability to support the PCC as outlined in the charge: offering financial services, including the ability to receive and disburse funds; applying for grants; and providing technical support for a sandbox environment. What these organizations would charge for such services varies from a fee for service or a possible percentage of paid invoices method (LYRASIS), to a flat fee (CRL), to possibly nothing (OCLC). In the case of CRL and LYRASIS, the PCC would have to generate revenue (from members, perhaps) to pay for the services each would provide in ways that the PCC does not currently do. These organizations, with the possible exception of OCLC, have relationships with other organizations whom they now support within their own infrastructure. The size and responsiveness of the organization is worth consideration: CRL and LYRASIS are quite a bit smaller than OCLC. Ability to devote individualized attention to the current and changing needs of the PCC may be a criterion to use in further evaluating these organizations, or any other. While each will have its respective positives and negatives, in general this type of organization is a very viable solution for the PCC.

2. Remain as is.

Although the PCC can remain “as is”, “as is” will not resolve the issues the PCC is trying to address. It is true that the PCC receives much support and services from LC, but since LC cannot, due to federal regulations, support PCC in its proposed endeavors, “as is” is only good for the Secretariat support that the PCC currently receives from LC.

3. Other options for addressing the PCC goals and objectives, particularly the approach to research projects, grants, etc.

No matter which direction the PCC chooses, the Task Group makes the following operational suggestions for the Steering Committee’s consideration:

- Form partnerships with organizations that have similar research interests. Such relationships could address both grants and infrastructure.
 - ISNI and LD4P are both positive examples of this.
 - Model MOUs could be developed, which could be used for the PCC to partner with other organizations, or to help subsets of PCC libraries to work on projects.
- Establish a longer term for the Chair. This would give the Chair a better sense of empowerment and would allow ideas/projects more time to mature.
- Create a Treasurer position, with control over a separate bank account and other financial matters. (The latter will likely require an Employer Identification Number (EIN); see Appendix E.)
- Register PCC as a Non-Profit Corporation (see Appendix E).
 - Incorporation would provide the PCC with at least a minimum level of legal status which could, in turn, be useful in pursuing grants and research opportunities, and even affiliation with another organization.

CONCLUSION

The investigations of the PCC Task Group on Legal Status have convinced us that pursuing independent 501(c) 3 status is not in the PCC's best interests. Instead, we are convinced that PCC will be better served by affiliating with a cognate organization capable of providing PCC with the financial and research support services it needs and wants. We have confirmed that there are indeed organizations willing and able to provide such services. If the PCC Steering Committee concurs with our conclusions, the Task Group encourages you to begin the process of evaluating potential partners by contacting those organizations, via an RFI/RFP, with whom you think further discussion is likely to be fruitful, including the three we interviewed during our investigation. Finally, the Task Group encourages the PCC to do so quickly so as to not lose the momentum created by the Group's investigations. The Task Group, however, sees value in having LC remain in its Secretariat role and is convinced that the continuation of that relationship would be beneficial to the PCC.

Appendix A: Full Charge to the PCC Task Group on Legal Status

Charge for PCC Task Group on Legal Status

February 26, 2018

Background and Issues:

The current nature of the PCC as an organization and its structure reflect its past rather than its future. That past was a stable MARC-dominated cooperative environment rather than the emerging post-MARC broadly collaborative environment. In the next few years, the PCC needs to act on several fronts identified in the current strategic directions, in the work of existing task forces and projects, and in the Linked Data Advisory Group's white paper. These fronts include: pilot partnerships such as with ISNI; the development and use of a sandbox environment in partnership with the Mellon-funded LD4P projects; and partnerships with ILMS vendors, bibliographic utilities, and national libraries to simultaneously maintain MARC production environments and develop post-MARC environments as production environments.

One key issue for the nature of the PCC is its legal status as an organization. As it is now, the PCC cannot have a bank account, cannot receive payments or grants, cannot write a check, cannot participate as a PI in a grant, and cannot partner with other agents as a peer. The PCC currently describes itself as an *effort*, "an international cooperative effort aimed at expanding access to library collections by providing useful, timely, and cost-effective cataloging that meets mutually-accepted standards of libraries around the world." The PCC also speaks of itself as a *community*. It is time for the PCC to explore becoming a legally recognized nonprofit entity that can act on its own. What benefits would result? What costs would accrue? How might such a change in PCC's legal status affect its relations with the Library of Congress, OCLC, and others?

Reporting to the PCC Steering Committee, the PCC Task Group on Legal Status is charged to:

1. Investigate how similar organizations meet these challenges.
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Timeline: report to Steering by October 1, 2018.

Appendix B: Cognate Organizations Having Independent Legal Status

PCC Task Group on Legal Status Cognate Organizations Having Independent Legal Status

September 26, 2018

American Library Association (ALA)
ArchivesSpace
arXiv
Association for Library and Information Science Education (ALISE)
Association of Research Libraries (ARL)

California Digital Library (CDL)
Chicago Collections
Consortium of Academic and Research Libraries in Illinois (CARLI)
Council on Library and Information Resources (CLIR)

Digital Library Federation (DLF)
Digital Preservation Network (DPN)
DuraSpace

Greater Western Library Alliance (GWLA)
HathiTrust
Ivy Plus Consortium
LYRASIS

Music OCLC Users Group (MOUG)
NorthEast Research Libraries consortium (NERL)
OCLC
Online Audiovisual Catalogers (OLAC)

Pennsylvania Academic Library Consortium, Inc. (PALCI)
Scholarly Publishing and Academic Resources Coalition (SPARC)

Appendix C: Establishing a Stand-Alone 501(c)3 Organization

PCC Task Group on Legal Status Establishing a Stand-Alone 501(c)3 Organization

Submitted to the PCC Steering Committee, June 22, 2018

This document is intended to give a brief summation of what establishing a stand-alone 501(c)3 organization might take.

From IRS Publication 557:

An organization may qualify for exemption from federal income tax if it is organized and operated exclusively for one or more of the following purposes. Religious. Charitable. Scientific. Testing for public safety. Literary. Educational. Fostering national or international amateur sports competition (but only if none of its activities involve providing athletic facilities or equipment; however, see Amateur Athletic Organizations, later in this chapter). The prevention of cruelty to children or animals. To qualify, the organization must be organized as a corporation (including a limited liability company), unincorporated association, or trust. Sole proprietorships, partnerships, individuals, or loosely associated groups of individuals won't qualify.

Other information:

To be tax-exempt under section 501(c)3 of the Internal Revenue Code, an organization must be [organized](#) and [operated](#) exclusively for [exempt purposes](#) set forth in section 501(c)3, and none of its earnings may [inure](#) to any private shareholder or individual. In addition, it may not be an [action organization](#), *i.e.*, it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

Organizations described in section 501(c)3 are commonly referred to as *charitable organizations*. Organizations described in section 501(c)3, other than testing for public safety organizations, are eligible to receive tax-deductible [contributions](#) in accordance with Code section 170.

The organization must not be organized or operated for the benefit of [private interests](#), and no part of a section 501(c)3 organization's net earnings may inure to the benefit of any private shareholder or individual. If the organization engages in an [excess benefit transaction](#) with a person having substantial influence over the organization, an [excise tax](#) may be imposed on the person and any organization managers agreeing to the transaction.

Section 501(c)3 organizations are restricted in how much political and legislative (*lobbying*) activities they may conduct. For a detailed discussion, see [Political and Lobbying Activities](#). For more information about lobbying activities by charities, see the article [Lobbying Issues](#); for more information about political activities of charities, see the FY-2002 CPE topic [Election Year Issues](#).

Costs and Timeline for Filing for 501(c)3 Status:

Once the organization has the recommended incorporation, it may file for IRS tax exempt status, in this case for 501(c)3 status. The process is laborious and once the application is filed, can take upwards of 12 months for approval (or rejection).

In order to apply for 501(c)3 status, an organization must file IRS Form 1023. The current cost to do so is \$600. The form is 29 pages long but with addenda and additional forms, the resulting document can be 50-100 pages long. It is estimated to take up to 100 hours to complete.

Although, an organization could choose to file the form itself, it is highly recommended retaining a reputable attorney who specializes in non-profit law. The cost can be anywhere between \$5,000 and \$10,000 or higher depending on the complexity of the application.

Tax Returns and Other Forms:

Despite being tax exempt, a 501(c)3 organization must file tax returns including a state return if applicable. In addition to a tax return, the organization must file IRS Form 990 and forms relating to political activity including lobbying. A 501(c)3 is limited to a \$1,000,000 cap on political activity and lobbying.

Governance:

A Board of Directors is a requirement for incorporation and IRS status. A Board of 6-8 would probably mean that an Executive Committee is not necessary. A Board of 10 or more would indicate an Executive Committee would be beneficial. The Board would consist of a President/Chair, President-elect/Chair-elect, Treasurer, Secretary and eventually a Past President/Past Chair, as would an Executive Committee including the Executive Director.

Constituting a Board can be done in three ways: a competitive election, a non-competitive election or by appointment.

Committees that are needed at a minimum are:

- Budget/Finance/Audit
- Nominating
- Governance and Bylaws

Other committees may be required:

- Membership
- Continuing Education/Training/Programs
- Development/Fundraising
- Research
- Current established working groups

Finances:

Some costs could be mitigated IF you find an attorney who would be willing to contribute time pro bono and IF you were to find an institution or organization that would provide office space gratis. Nevertheless, the ongoing operational costs remain.

These costs would require either membership dues and/or spending time focused on finding sources of funds just to run the operation versus raising grant funds to support participation in the kinds of projects and programs the group is interested in.

Staffing:

Expense Level:

A staff of at least three is indicated. Salaries are exclusive of benefits.

HIGH

Executive Director		\$70 – 90,000+
General Staff (2)	@	\$50 – 70,000+

The following staff could be retained on a contract basis with respective agencies: HIGH

IT	Finance/Accounting	\$60 – 80,000
		\$60 – 80,000
	Human Resources	\$50 – 70,000
	Attorney	\$300 – 500 per billable hour
	Outside Audit Firm	\$300 – 500 per billable

Office:

Office space would be the most costly expense.	HIGH
Based on 800 sq. ft. and a cost of between \$25 and \$40 per sq. ft. the cost of leasing a space would be between \$20,000 and \$32,000 per year	
The cost would be higher in a large city and lower in a more suburban or smaller city location.	

Other expense pertaining to an office would be:

Utilities – electric, heat, internet	Low
Phone system including cell phone contract	Low
Copier - leased	Low
Office furniture - New = \$20,000	HIGH
Used = \$10,000	Moderate
Supplies – start up = \$5,000 – 10,000	Moderate
Bank account - fees	Low

IT:

Computers (Could be lease or purchase which would alter the cost)	HIGH
Desk top = 4 @ \$3,000	
Laptops = 4 @ \$2,000	
Intranet	Moderate
Financial platform	Moderate
Membership platform	Moderate
MS Office Suite – group	Low
CE platform	Low
Web meeting platform	Low
Malware/virus software	Low
Printers (4) @ \$500-700 or print to copier hub	Low
Server/backup/cloud/maintenance contract	Moderate

Human Resources:

Benefits administration – contract	Expense Level:
Payroll processing - contract	Low
Retirement benefit - such as TIAA:	Low
10 – 15% organizational contribution	Moderate
5-7% staff contribution	
Health Insurance - 33% - 40% of salary cost	HIGH
Long Term Disability Insurance	Low
Compliance with Federal, state and local regulations and laws	Moderate
Such as ACA, workers compensation, Social Security and Medicare	

Other Expenses that might be incurred, though the list is not exhaustive:

Meetings - room rentals, AV, catering	Moderate
Travel - staff and officers	Low
Stipends of various sorts	Low
Printing	Low
Publications	Low
CE/Training	Moderate

Appendix D: Sample RFI/RFP

Confidential - Not for Public Distribution

Appendix E : Incorporation

PCC Task Group on Legal Status

The Incorporation Process

September 26, 2018

Non-profit organizations are generally incorporated. The reason for doing so is primarily to protect the officers and members of the organization from legal action. As an officer in an incorporated non-profit, your assets are not subject to inclusion in any lawsuit brought against the organization.

Filing for incorporation is a state-based procedure. Each state has its own application process and fee structure. Fees vary but are generally in the low hundreds of dollars. Selecting which state to incorporate in is a decision to be made. If the organization is not headquartered in the state of incorporation, then an agent must be retained to receive legal notifications from the state.

An organization is required to have the following minimum to file an application: Articles of Incorporation, Bylaws, and an initial Board of Directors. Other requirements may include an Employer Identification Number (EIN) and an initial budget for the organization. States vary in their requirements.

Applications for incorporation can be filed without legal help, but any errors in the application process will delay action by the state. Having an attorney draw up the necessary papers is recommended. An attorney may charge a flat fee for doing so or may charge hourly rates. Approval times vary but it's never quick.

In order to file for incorporation, sufficient advance time is required to assemble and complete the necessary documents and fulfill any other state requirements. Advance time would also be needed to recruit the minimum number of Board members required and secure their consent and contact information.