

MEMORANDUM

TO: DALNET Governance Task Force
FROM: Nardina L. Nameth *Dina*
DATE: August 14, 1984
RE: DALNET Legal Options.

"When a substantial number of academic, non-academic, public and private libraries or library institutions, are interested in establishing, improving, or otherwise modifying a network, this interest will provide enough prestige, appropriate public purpose, and general political clout to allow the participants to formulate just about any kind of structure and governance they desire."¹

After reviewing the types of legal structures available for local/regional library networking, I have concluded that any of them will be workable. The important concept is that the agreement worked out by network members must be written down, and must specify the responsibilities and privileges of each participant.

I've identified three legal structures which fit our purposes best and characterized them for your information and review:

1. Service Agreement Between Existing Legal Entities.

This is the service bureau concept. Each participant would establish a contractual relationship with Wayne State University in which the responsibilities of each party are defined. With this option, control of the network and ownership of system equipment would reside with Wayne. Contracting could be a group process, in which network members each bought similar services from Wayne; or it could be an individual process, where specialized contracts were designed around the specific institutional needs of each member. In the service bureau arrangement, a governing board, or board of directors is usually advisory to the host institution. An advisory status may or may not be acceptable to all members. For participants with fewer holdings in the database, a service sureau may be the best structure.

¹Huntington, Carline and John H. Burkley. "Legal aspects of organizing a library network." Bulletin of the American Society for Information Science, Vol. 6(5), June 1980. pp. 17-19.

2. Corporate Legal Structure.

A corporation is an independent entity and is created through statutes of the State of Michigan. As a statutory entity there are certain state required legal obligations to organize and maintain this type of structure. DALNET would have to:

1. File Articles of Incorporation (one time only).
2. Write Bylaws (initial organization and revisions).
3. File an Annual Report (annual).

→ Although we have been advised that these reports may be cumbersome, they are either (as in 1 and 3) quite simple; or (as in 2) required for a smooth operation anyway (See Appendix A). The statutory requirements include such things as fiscal year, purpose of the organization, membership requirements, financial resources and support. We would have to discuss and decide the content of items as a network for any independent legal entity.

The corporate structure was recommended in the readings as the most politically independent entity with the best basis in statutory law to make contracts, purchase equipment, and defend itself against unreasonable claims on its assets and resources. This independence could make the structure less desirable than other organizational structures which provide more control for individual institutions.

The governing board of a corporation would consist of representatives from the network libraries. The board would truly govern the corporation. Voting power could be divided equally among members or be weighted depending upon size of each member's financial contribution.

3. Unincorporated Associates, Joint Ventures, Library Cooperatives.

→ The Joint Ventures legislation is a series regulations which specifies the terms and conditions of a group business venture. The parties to a Joint Venture agreement are treated as partners; their relationship is defined legally in a contract.

The Joint Venture preparation guidelines are remarkably similar to the requirements for corporate bylaws. I was unable to determine any real difference in the strengths and weaknesses between the two structures as they related to daily operations of the network. The only caution would be the fact that joint ventures are not statutory entities but contractual entities. The State of Michigan would not be checking to see if we had included all the essential elements to effectively run a network; we would do that as a group. This lack of a check is reflected in some of the agreements we've reviewed to date. Ours will, of course, contain all the needed elements (Appendix B).

In a Joint Venture, the governing board could be advisory, have absolute control, or fall anywhere between the two extremes. This would be up to us, because a joint venture is perceived as a partnership in the eyes of the law, to be defined as we agree.

Sorry I was unable to attend our Thursday meeting. I'll be glad to clarify and answer questions at our next meeting. I've included openings in my schedule for the week of August 20th if you plan a meeting for that week.

Tuesday, August 21, 1984	9:00 a.m. - 1:00 p.m.
Thursday, August 23, 1984	All Day
Friday, August 24, 1984	1:00 p.m. - 5:00 p.m.

See you soon.