5-29-2014

To Sign or Not to Sign: What Makes the Difference Vis-a-vis Access Copyright?

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CLA, Thursday May 29, 2014;
Victoria.

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Supported by CLA Library Research & Development Grant

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Each *Feliciter* issue: Copyright Column

CLA Copyright Committee author(s) -- peer-reviewed by the CLA Copyright Committee (general column editor, M.A. Wilkinson):

- Jeannie Bail & Brent Roe, "Copyright and the Trans-Pacific Partnership" *October 2013*
- Rob Tiessen, "The Definition of "Commercially Available" *December 2013*
- John Tooth, "Copyright for Schools and School Libraries" *February 2014*
- Christina Winter & Sam Cheng, "Copyright Skills in Academic Libraries" *April 2014*
- Margaret Ann Wilkinson, "Copyright Users' Rights in International Law" *June 2014*

Changing Copyright Environment for Canadian Academic Libraries

- Copyright Modernization Act
  - Expanded categories for Fair Dealing include "education" (s.29)
- Decisions of the Supreme Court
  - on law as it was before the Copyright Modernization Act,
  - confirm and interpretations of Fair Dealing begun in 2004 by Supreme Court in *CCH v Law Society* case about Great Library
- Access Copyright targets academic institutions outside Quebec in Tariff Application to Copyright Board of Canada

How have Canada's academic institutions responded and where might the future take us?

- What characteristics of academic institutions or their libraries have played demonstrable roles in the ways these institutions have so far responded to the changing environment?
- Should we expect all academic institutions to respond in the same way to the changing environment?
- Can past experience guide future decision-making in this area?

Traditional Centres of Concentration of Intellectual Property Expertise in Canada

Collective Institutional Leadership

ACCC

- 1994-95. ACCC members used the AUCC licence.
- 2004. First ACCC negotiated licence.
- 2010 Licence renegotiations fail. AC files for tariff.
- May 2012. New model licence negotiated.
- October 2013. Withdraws from tariff hearings.

AUCC

- 1994 Negotiated the original Model Licence with CANCOPY (Access Copyright)
- 2010 Licence renegotiations fail. AC files for tariff.
- April 2012. New model licence negotiated.
- April 2012. Withdraws from tariff hearings.

Institutional Governance

Colleges

- Ontario's colleges, for example, founded under public statute, not fully self-governing
- Manitoba, Alberta, BC & Nova Scotia, for example, have legislation similar to that in Ontario.

Universities

- Founded by individual statutes*
- Traditionally bi-partite decision-making –
- Senates govern academic matters; Boards of Governors govern "business" matters**

- *Alberta's universities "re-founded" under public statute
- ** U of T changed to one Governing Council

Rise of Copyright Officers in Colleges and Universities:

- 1st Wave 1990's after signing the initial CANCOPY licence, along with issues around public performance rights.
- 2nd Wave 2010 – 2011. Dealing with interim tariff or opting out.
- 3rd Wave. 2012 – 2013. The new model licence / opting out / preparing for after 2015

CARL Members by Province

In 2012, of the 29 CARL members

- All 6 Quebec members of CARL have stayed licensed with Copibec (Access Copyright and Copibec agree that all Quebec institutions will deal through Copibec) – leaving 23.
- 0 of 23 remained in the tariff process
- 11 of 23 signed new licences offered by Access Copyright
- 12 of 23 opted out of dealing with Access Copyright at all (either by license or through the tariff process).

REGION	INSTITUTION	ACTION TAKEN	PRESS RELEASE?
WESTERN	Alberta	Access©Licence	YES
	UBC	"Opt Out"	YES
	Calgary	"Opt Out"	YES
	Manitoba	Access©Licence	YES
	Regina	Access©Licence	NO
	Saskatchewan	"Opt Out"	YES
	Simon Fraser	"Opt Out"	YES
	Victoria	Access©Licence	YES
ONTARIO	Brock	Access©Licence	YES
	Carleton	"Opt Out"	YES
	McMaster	Access©Licence	YES
	Guelph	"Opt Out"	YES
	Ottawa	Access©Licence	YES
	Queen's	"Opt Out"	YES
	Ryerson	Access©Licence	NO
	Toronto	Access©Licence	YES
	Waterloo	"Opt Out"	YES but no reasons
	Western	Access©Licence	YES
	Windsor	"Opt Out"	YES
	York	"Opt Out"	YES
QUEBEC	Concordia	Licence with Copibec	n/a
	Laval		
	McGill		
	Montreal		
	UQAM		
	Sherbrooke		
ATLANTIC	Dalhousie	Access©Licence	YES
	Memorial	"Opt Out"	YES
	New Brunswick	"Opt Out"	YES

Changes in 2013 not reflected in previous chart and not part of this study, which focuses on 2012 actions -

- The Toronto/Western Licence expired on December 31, 2013.
- Negotiations for a new Toronto/Western licence broke down on December 13, 2013.
- Western and Toronto subsequently chose not to renew their licenses with Access Copyright (becoming “opt out”).

What The Press Releases Said in 2012

"OPT OUT"	# PR mentions		Access Copyright Licence	# PR mentions
LEGAL EXTERNALITIES				
Copyright compliance system	4		Copyright compliance	3
Changing legal situation	3		No real changes in legal system	1
Insufficient legal protection	1		Legal protection	5
Fair dealing & other exceptions	1		Rights beyond Fair dealing/ digital rights	2
FISCAL MANAGEMENT				
Duplicating existing licenses	6		Cost certainty	4
Cost-benefit ratio/affordability	5		Buying time to develop copyright compliance system	4
Open Access	3		Heavy user of coursepacks	1
			Retroactive payments	1
ACADEMIC ISSUES				
Academic freedom	2		Protection of Academic freedom & privacy	2
Feedback from community	2			

Who Made the Decision ?

Decision-Maker	# of Institutions	Decision	Institution(s)
PROVOST	14	7 License/ 7 Opt Out	U of A, UBC, U of C, Reg, Brock, Carle, Queens, U of T, Waterloo, UWO, Wind, York, Dal, Mem
PROVOST + PRES	2	License/Opt Out	Mac, Guelph
PROVOST + VP Finance	1	Opt Out	Sask
PROVOST + Univ Librn	1	License	Vict
VP Admin	1	License	Man
ADMIN or EXEC Committee	2	Opt Out/License	SFU, Ottawa
Board of Governors	1	Opt Out	UNB
No public data	1	License	Ryerson

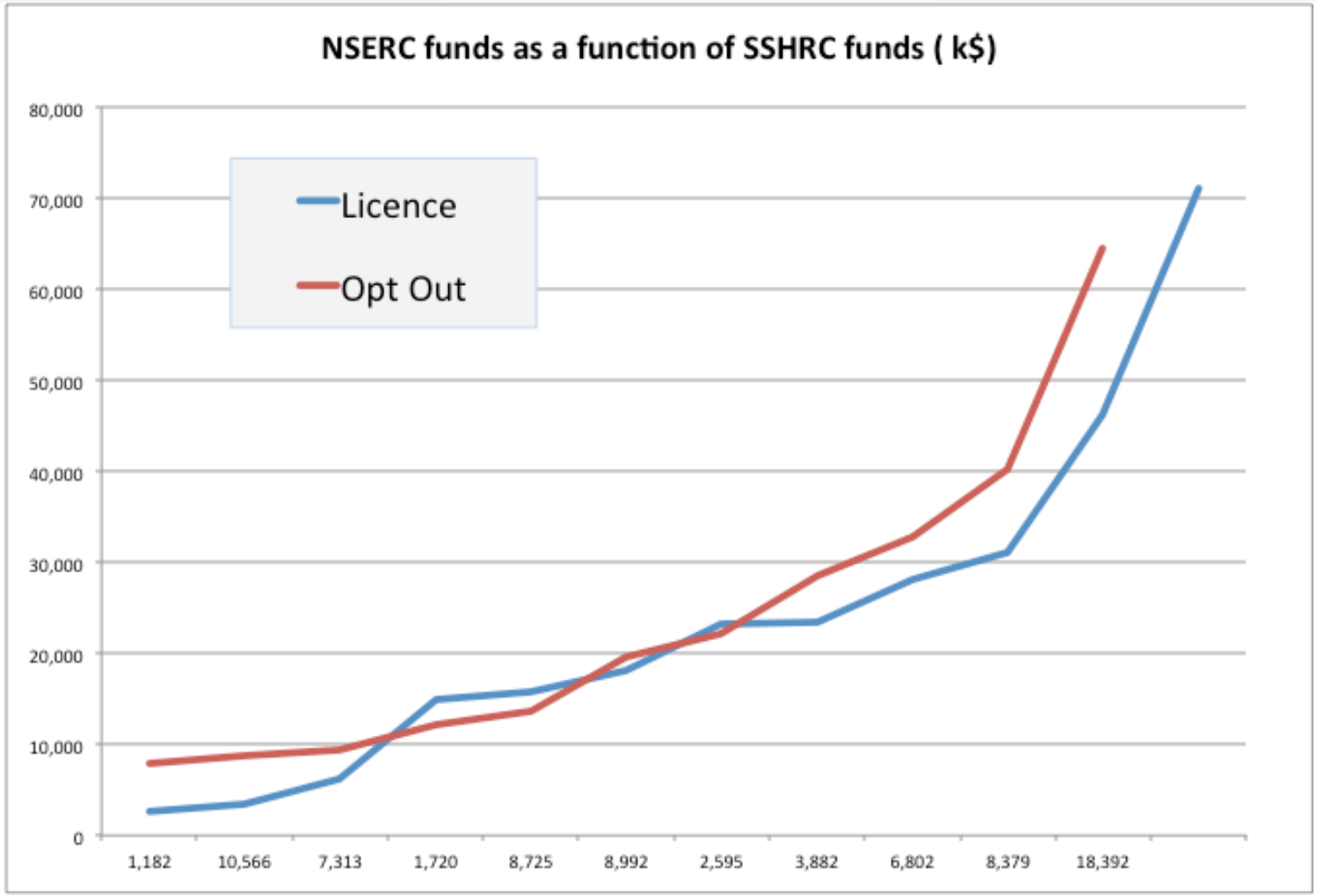
Source: Retrieved from individual searched of publically available university governance materials (e.g. Senate Minutes)

Characteristics of Sole Decision-Makers

Decision	Time in Role	ED Background	Gender	Institution
License	9	Soc Sci	M	Alberta
	1	Arts / Hum	M	Regina
	3	Soc Sci	M	Brock
	1	Soc Sci	M	Queens
	3	Arts / Hum	F	Toronto
	2	Science	F	Western
	1	Science	F	Dalhousie
	9	Science	F	MANITOBA *
"Opt Out"	5	Science	M	UBC
	1	Science	F	Calgary
	3	Soc Sci	M	Carleton
	5	Science	M	Waterloo
	2	Arts / Hum	M	Windsor
	3	Soc Sci	M	York
	0	Science	M	Memorial
	4	Science	M	UNB

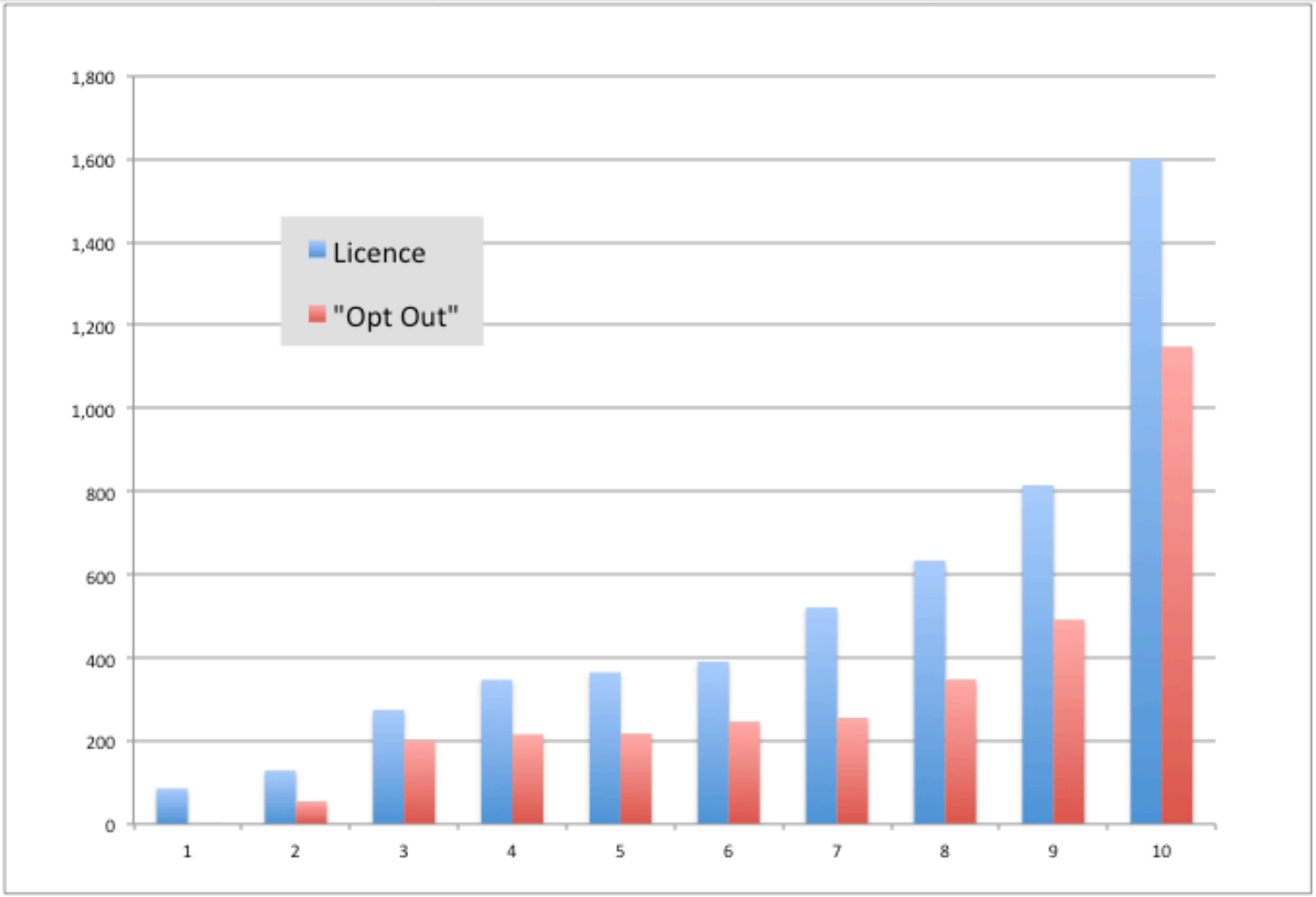
Source: Publically Available Data (e.g. Biographies)

Institutional Financial Characteristics (1) : Funding Support from NSERC & SSHRC



Source: SSHRC and NSERC

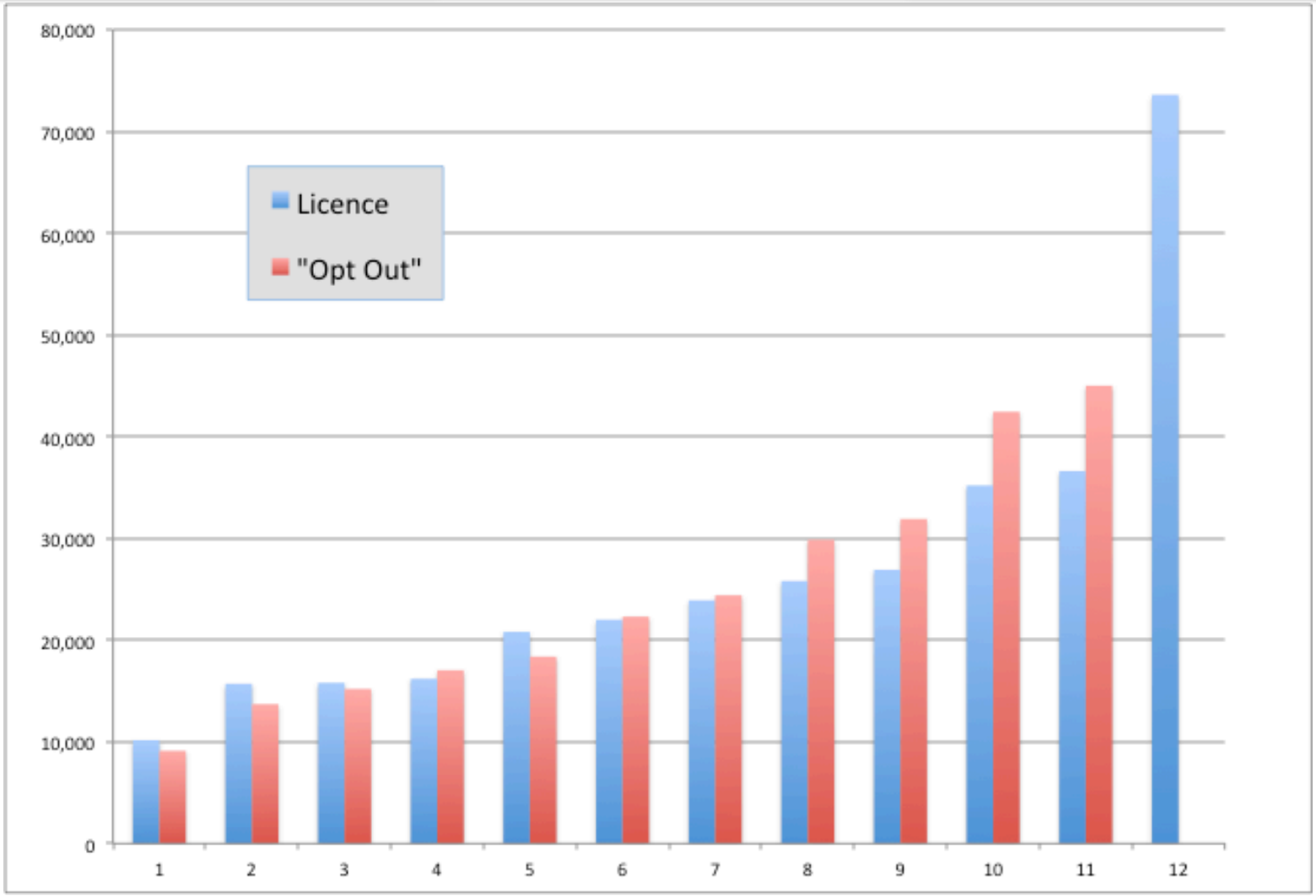
Institutional Financial Characteristics (2): Endowments



Note: Data for 4 CARL universities are missing, two from each category

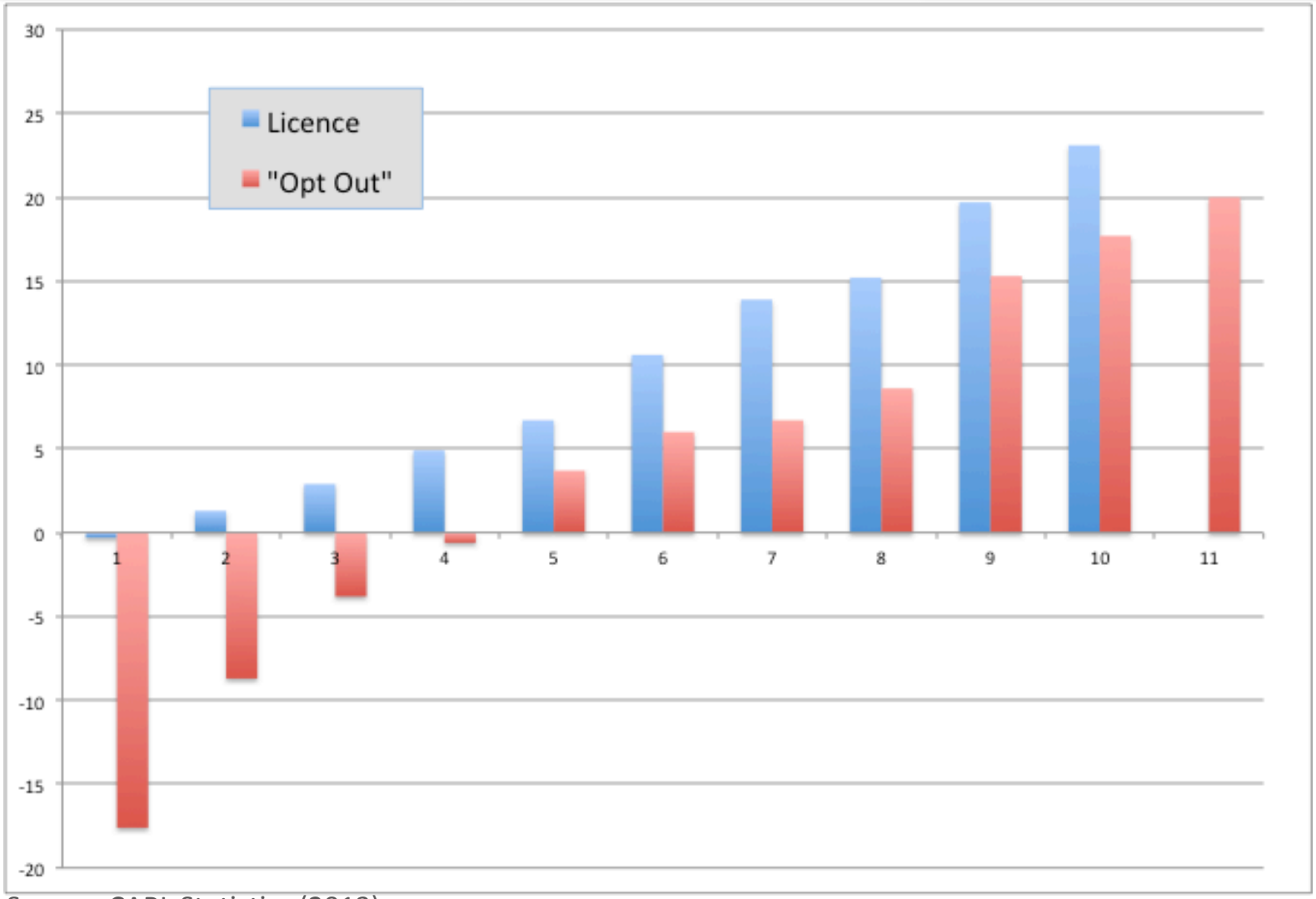
Source: National Association of College and University Business Officers and Commonfund institute, 2013

Institutional "Information" Characteristics (1): Size of Student Body



Source: Publicly Available University Data

Institutional "Information" Characteristics (2): % Change in Collections Expenditures 2007 to 2011



Source: CARL Statistics (2013)

Qualitative Data to Complement Quantitative Data Gathered: Interviews

- Interviews of Copyright Officers and University Librarians at CARL institutions across the country – both those in the sales territory of Access Copyright and those in that of Copibec.

- Previous research shows academic libraries play the key role in educating universities about copyright (see Tony Horava, " Copyright Communication in Canadian Academic Libraries: A National Survey," *Canadian Journal of Information and Library Science* 34, no. 1 (2010): 1-38, doi: 10.1353/ils.0.0002) – which identifies them as important subjects for this study looking at campus decision-making around the 2012 copyright challenges.

Institutions where Confidential Interviews Already Completed or Arranged (further interviews in planning stages)

Institution Type in 2012	Institutions Participating So Far:
"Opt out" Institutions	6 +
Access Copyright Licence Institutions	6 +
Copibec Institutions	2 +

Thank you! Questions?