

Principles of Negotiation

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Abstract:

This article summarizes a presentation given at the 2015 North Carolina Serials Conference by Derrik Hiatt and Lesley Jackson. The talk focused on principles useful when conducting license negotiations that Hiatt and Jackson discovered through their own experiences as electronic resource management librarians and, in Jackson's case, as an EBSCO representative. These principles cover a variety of concepts, but all seek to frame negotiation as an interpersonal relationship based on mutual need instead of the antagonistic, intimidating process that it can become.

Keywords: license negotiation | electronic resource acquisitions | vendor-librarian relations | academic libraries | best practices

Article:

INTRODUCTION

In this presentation at the 2015 North Carolina Serials Conference, based on an article previously written by Derrik Hiatt for *Technicalities Magazine* (2014), Hiatt, electronic resources librarian at Wake Forest University, and Lesley Jackson, an account services manager for EBSCO, shared principles of license negotiation for librarians. Drawing on the presenters' views of negotiation as a series of interpersonal conversations, these principles focused on using communication strategies to better understand the other party while remaining firm in one's own convictions. Through detailing these concepts, illustrated with examples from their own experiences, they sought to help current and future negotiators overcome their fears of the licensing process.

Following the presenters' lead, this report will have little in the way of introduction, but instead will move immediately into detailing the principles that Hiatt and Jackson discussed. Each section will first list the principle, followed by an explanation of its importance, and when possible, an example of its use in a real negotiation scenario. This report concludes with a short summary of the discussion that arose after the main talk.

PRINCIPLE 1: BE PREPARED

Before entering a negotiation, research the other party's business models. Useful information includes their source of content, how they license this content from the original creators, and their general market and audience. Knowing the answers to these questions lets the negotiator understand what they might be able to change in a license and what they cannot. For example, a librarian might discover that the business with which they are negotiating uses an aggregation model, meaning that they gather content from many sources and are bound by agreements with original content producers. Having done this research, the librarian would not bother asking that business to notify the library every time content changed, as the vendor's lack of direct control over the content it displays would make this impossible.

PRINCIPLE 2: KNOW THE TOOLS AND RESOURCES THAT CAN HELP YOU

Organizations like LibLicense and the National Information Standards Organization (NISO) constantly develop new tools and resources to help those involved in license negotiation, and it is the negotiator's job to keep up-to-date on new developments in this space. LibLicense, a joint project between the Center for Research Libraries (CRL) and the Association of Research Libraries (ARL), recently began offering a free piece of software that one can use to make a model license. One simply enters a license term that one wants to include and the software generates language for that term based on LibLicense's existing model licenses, which were newly updated in 2014 (Center for Research Libraries [CRL], 2015a). In addition to this new functionality, LibLicense provides a licensing vocabulary guide that is continuously updated. This type of resource can be especially useful if one is new to licensing and struggles with some of the highly technical legal vocabulary that licenses frequently employ (CRL, 2015b).

Unlike LibLicense, which focuses on helping the negotiator interpret and create legally binding documents, NISO's Shared Electronic Resource Understanding (SERU) acts as a best practice and alternative to licensing. SERU outlines commonly accepted expectations for e-resource providers and purchasers. It does not have the legal power of a license but instead relies on each party stating that they will respect United States copyright law. Both libraries and vendors can sign onto SERU's registry, indicating that they are willing to use SERU in place of a standard license. If both negotiating parties have signed this registry, then they can simply purchase the product without license negotiation and rely instead on the principles described in SERU (National Information Standards Organization, 2015). Even if a publisher is not on the SERU list, one can always ask if they are interested in using it instead of a license.

In addition to these official tools, librarians can make their own database of terms that they found useful during previous license negotiations. Hiatt mentioned that he keeps text documents for common license terms, like *scholarly sharing*, *authorized users*, or *indemnification*. When reading a license, if he finds phrasing that he feels works especially well, he copies this into the document for that category, along with a citation indicating its origin. Then when he comes across a particularly difficult section in a later negotiation, he can turn to these stored phrases to assist in finding the right words. This technique does not require much technology—just a file system and the use of a word processing tool—and therefore can be adopted by most libraries.

PRINCIPLE 3: BE ABLE TO EXPLAIN WHY YOU WANT TO CHANGE SOMETHING

Sometimes changes to license terms can be handed down from administration or legal, sometimes they can originate from higher levels in one's department, and sometimes they can come from the negotiator's knowledge of user behavior. No matter the source of the impetus to change the license, the negotiators will be able to make a much stronger case if they can provide examples of how the existing terminology directly impedes their users or their library. Thus, especially for terms that come down from higher levels of the organization, the negotiator might have to reach out to the creators of these rules to obtain their rationalization, along with examples. Negotiators should not be afraid to bring in someone with more experience concerning this specific topic to speak to the other party. By using specific instances of the issue, both sides can better craft language to directly and creatively address it.

To illustrate the importance of this best practice, Jackson talked about a time during her tenure as an electronic resources and interlibrary loan librarian. She had a problem with a license's ILL clause, which asked for every online ILL request to be printed and then rescanned before it could be sent to the requester. Instead of just telling the vendor to change their ILL language, without explaining why, she explained to the publisher the exact problem and how this would greatly affect their workflow and the speed with which they could get materials to patrons. When she gave this information to the publisher, they were surprised about the issue and responded that they did not actually mean for that to be the result of their wording. In the end, they changed the phrasing to better reflect their intent, and this potential major issue quickly resolved itself.

PRINCIPLE 4: DO NOT BE AFRAID TO ASK, EVEN IF YOU THINK YOU KNOW THE ANSWER

Both presenters emphasized that one never knows what the result of a request during negotiation will be until one actually asks the other party. It might be scary or seem unlikely, but Jackson pointed out that most publishers are very willing to make negotiations and changes. In fact, EBSCO's legal department told her that they will almost always say yes to a request unless it would violate the law. Bearing out this willingness, she also mentioned that while a librarian, she never had a request to change something on a license completely denied. The message was simple: Librarians need to have confidence in themselves, in their needs, and not be afraid to ask.

Building on this concept, Hiatt emphasized that even if one has had a request turned down once, it does not hurt to ask again at a later date, as circumstances might have changed. As an illustration, he told of negotiating the purchase of a package that had multiple subject collections. If a library bought all the subject collections, they could receive a 40% discount, but Hiatt knew his library would not reach that threshold. At the beginning of the negotiation, he asked the businesses' representative if they could receive a partial discount if they bought a partial collection but received a firm no for an answer. As the end of negotiations approached, he asked again if they could have a discount, this time backed with the specifics of how many collections they planned to purchase. Unexpectedly, the publisher responded that that they could have a 10%

discount on the product. While of course a negotiator does not want to ask for the same thing over and over again, a well-timed second request can greatly benefit the library.

PRINCIPLE 5: DON'T TAKE IT PERSONALLY

Sometimes the other party has to say no, based on the law or their own company's policy. At other times, communication fails and confusion and disagreements arise. Remember, however, that if one of the negotiators lets his/her feelings get hurt or lashes out in an unprofessional manner, this can sour a business relationship for a long time. While the relationship between publisher or vendor and library is a complicated interpersonal dialog, disagreements should remain on a business level and never become personal attacks. Of course, as librarians and vendors are human, sometimes things will escalate, and the temptation exists to let things get too heated. Hiatt suggested a few techniques to salvage the situation when this happens. One of the best things to do is simply step back from the tense situation, perhaps for a few hours, perhaps for a few days. Go do something else and then, when the mind is clearer and tempers are calmer, reengage. If, after this, communication still seems to be failing, bring in another party, like a supervisor, to restart the conversation. Everyone communicates in different ways, and a new method might be what is needed to solve a fraught situation.

PRINCIPLE 6: LOOK FOR THE WIN-WIN

Nonetheless, avoiding frustration in the first place remains the goal. One of the best ways to do this is to believe that vendors, publishers, and libraries are not enemies. If a negotiator enters a negotiation with the mindset that it is a conversation between two groups who need something from one another—the vendor needs the sale and the library needs the content—then they realize that the dialog does not need to become antagonistic. Because of the mutual nature of this relationship, there often is a good chance to achieve, borrowing Covey's (1989) language, a win-win situation, where both parties get what they need. Even though the solution might not seem obvious, new methods may arise if both parties remember that everything in a deal is negotiable. For example, if the library wants, but is unable to attain, a discount, it should consider what else could be gotten instead, such as more content or perhaps no price increases over the next three years. Everything can be negotiated.

PRINCIPLE 7: BE PATIENT

Remember that both parties exist within a larger business context, and the negotiators have many other duties besides a particular licensing deal. In addition, licenses frequently go through many departments above and beyond the negotiator, such as legal, administration, and finance. What seems like a priority for one department might not be as important to another, and the process can stall. The key here is not to let the length of time cause frustration to build and negatively influence the tone of the negotiation. Instead, stay the course, keep on reminding the necessary parties of the importance of this deal, and if necessary, speak to other contacts at the other party's organization to help the process move along.

Hiatt illustrated this principle through a story about a license that he had been negotiating for over a year. Through discussion with the other principal negotiator, it had become clear that their

lawyer currently had the license and did not consider it a high priority. Trying to find another avenue to move the process along, he approached the publisher's table at the American Library Association (ALA) and spoke to the representative there, whom he did not know. He told them about his situation and commented that he did feel that the company did not care a great deal about his school's business. It turned out he had spoken to the head of marketing for that publisher, who did not like to hear this about the company. Three weeks later, the publisher representative had received a reply from their lawyers, and the license was able to proceed. This shows the importance of both being patient with the process but also the necessity of bringing other parties into the conversation.

PRINCIPLE 8: LEARN AND DOCUMENT

As mentioned previously, license negotiations can be complicated and lengthy. Licenses, once negotiated, will be referred to for years to come. Due to this, a good practice is to develop a system to store and keep track of all versions of licenses. There are specific tools included in many electronic resource management (ERM) systems that assist in license tracking and storage. However, if you do not use an ERM, Hiatt mentioned alternate ways to keep track of this information. His school uses a wiki to record license problems, precedents, and key decisions made by administration and legal about license terms. This allows the school, when negotiating a license with similar terms, to be able to check the response of the administration or the legal department to a previous question and avoid repeating it.

DISCUSSION

After presenting these principles for successful license negotiation, Hiatt and Jackson opened the floor up for questions. Most questioners wanted to know how the speakers would handle negotiations in a specific situation. One attendee asked how one would use these principles to negotiate monitoring authorized users, since libraries cannot police everyone's actions, as is often requested in licenses. Hiatt and Jackson both agreed that this would be a great time to use the principle of "Be Able to Explain Why You Want to Change Something." When negotiating this term, the key here would be to explain, in concrete terms, the difficulties that this policing would cause in library workflows and management. One could also bring up the amount of users and the diffuse nature of where they access online resources to demonstrate the Herculean effort that would be needed to actually monitor everyone. Because in this case one can explain why this clause would be impossible for the library to follow in very specific terms, vendors will understand the dilemma more and be more willing to modify the language here to something like "The library will use best effort to monitor ..."

Another attendee asked how the presenters would approach a vendor if the library wanted to change an existing license to account for a new trend in user behavior that was either not covered or prohibited in the existing license. Jackson responded that with this type of question, it would be best to check with both parties' legal departments to see if this type of renegotiation would be possible. If Legal thinks this would work, Jackson suggested bringing up specific examples of how the current language is affecting users and what has changed since the license was negotiated. For example, anyone who works with professors knows that they email articles to

one another. Publishers might not realize that the current license forbids this, so if one can bring this up, they might be willing to change the language on an already-negotiated license.

Finally, concerning the principle of “Learn and Document,” an attendee wanted advice on how to keep track of license material, especially in a way that would make sense to a new person. Hiatt mentioned that many ways exist, from the technologically advanced tools like ERM systems, to spreadsheets and file folders. Regardless of the system used, he suggested the following rules. Make sure that the naming of the various drafts and location of materials is kept consistent. Pick a naming convention, pick a shared space on the computer system, and document these choices. When a new person comes in, make sure that they can find this documentation, which will lead them to the license files. The key here is organization and consistency.

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