

# Negotiation: One Library Spills the Beans

Nat Gustafson-Sundell Collections Librarian, Associate Professor Minnesota State University Mankato (MNSU) January 17, 2024

https://link.mnsu.edu/license2

Hi, Before I get started, I'd like to thank Minitex for this opportunity to talk about license negotiation. My name is Nat Gustafson-Sundell. I'm a Collections Librarian at Minnesota State University Mankato (MNSU), a regional, public, comprehensive university of about 14,000 students. MNSU is distinctive within Minnesota State for several reasons. Although the university is situated in the heart of a rural area, stretching down across southern Minnesota into Iowa and side to side into Wisconsin and South Dakota, the university is home to "students from more than 100 countries ... and is recognized by the Council on Undergraduate Research as one of the top 20 universities in undergraduate research in the United States" (https://www.mnsu.edu/future-students/international-admissions/). Mankato also provides numerous graduate study opportunities.

It can be difficult to follow along with an online presentation, so I've provided a link to the slides. You can access these slides through the link on the screen "link.mnsu.edu/license2."

- Strategic Goals
- Policy
- Analytics
- Toolkits
- Tactical Priorities
- Effective Negotiation
- Real Life

https://link.mnsu.edu/license2

On the screen, I've listed some of the factors I think are important for my own practice of negotiation. In the spirit of the spell-it-out series,

- Strategic Goals
- Policy
- Analytics
- Toolkits
- Tactical Priorities
- Effective Negotiation
- Real Life

https://link.mnsu.edu/license2

I hereby provide these factors as an acronym, SPATTER, which I hope doesn't reveal my state of mind. Full disclosure: My daughter is pretty enthusiastic about horror movies and she's asked me to watch several with her recently.

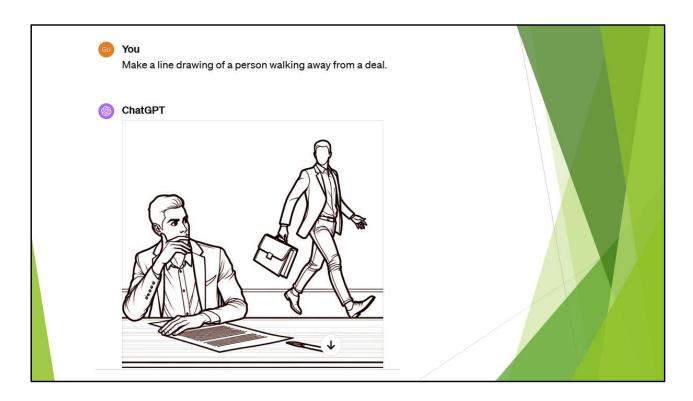


Of course, institutional strategic goals are very important for framing any initiative. At MNSU, there is an overarching University goal to serve as a "Nimble and innovative steward of resources." Our Journals Review Committee, or JRC, leads journal collection development for the University. The JRC has defined several goals under both the University and Library strategic plans. One of the JRC goals states "We will negotiate the best possible terms and costs for journals and journal packages."

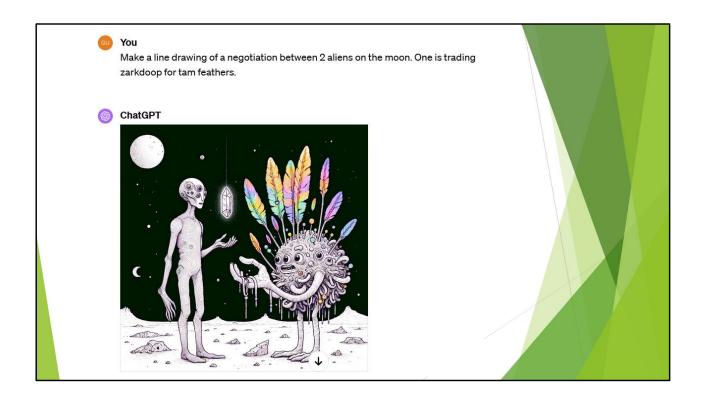


Now, you might say this goal is obvious, or you might think it need not be stated as such, but this goal is very important to my own practice. When the JRC defined this goal, we talked about what it takes to negotiate a better deal. Above-all, I think it is important to be able to walk away from a deal. If you can't walk away, then you are ultimately going to depend on the graciousness or generosity of your negotiating partner. When the JRC defined this goal, we agreed I could take risks for the Library and the University. I could engage in marketplace dramatics. I could threaten to walk away, or, if it came down to it, I could actually walk away.

By the way, the image on the screen is by Dall-E 3. This was my fourth attempt. In the first three I asked for an image of a negotiation in a marketplace. Each of the images seemed to me to rely on ethnic stereotypes, so I rejected them. For the fourth, I asked for an image of a negotiation in a business office, which is what you see here. There's just too much to say about this one, so I won't say anything...



My mandate to negotiate was important, recently, when I did choose to walk away from a deal. The vendor would not negotiate the term period of the agreement or provide a realistic financial hardship clause, so, after trying several times to explain our needs, I walked. Of course, there were other factors involved. The reason I wanted a shorter agreement or escape hatch was because I anticipated this journal package would be on a shortlist of cancellation candidates if the budget fell short.

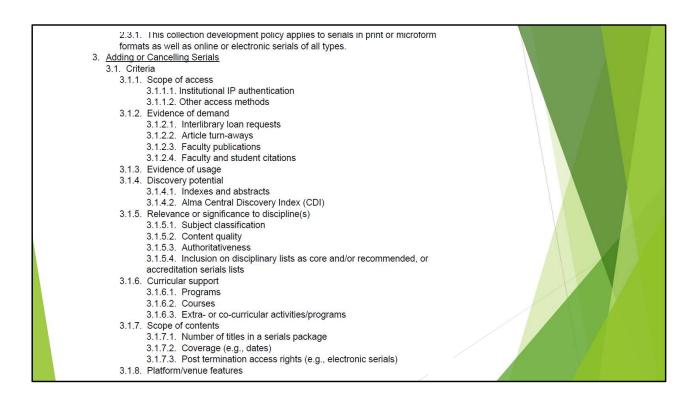


In another case, a vendor required a non-disclosure clause that would have hindered other Library functionality, including report production and campus communication. I insisted on revisions repeatedly. After several emails and a meeting, the sales rep asked his manager to join us for a second meeting. They said I had pushed the issue "farther than any other library," although they hadn't yet conceded anything. Ultimately, however, they did revise the term – not entirely to my satisfaction, but at least they agreed to meet me halfway.

In general, I think I push some negotiations as hard as I do only because I know I can. I have a mandate to negotiate, to take risks, and, if it comes down to it, I can walk away from deals.

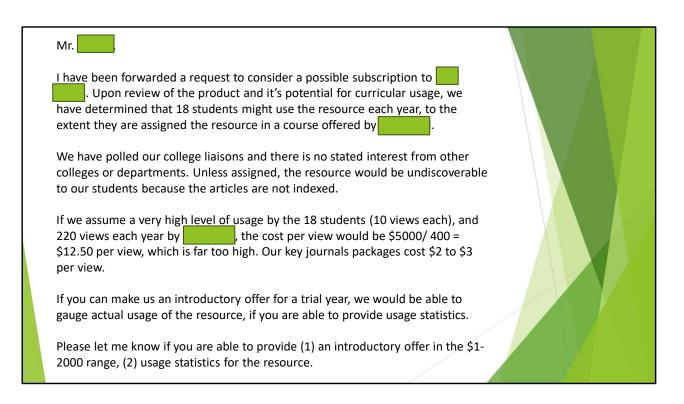


To support negotiation, I have many times found it helpful to refer to collection development policies and guidelines.

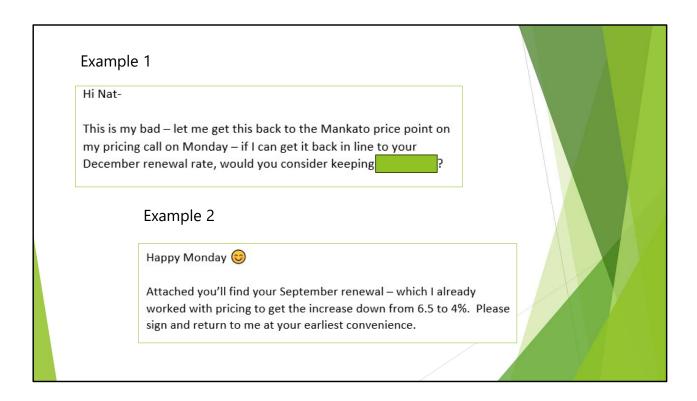


Policies can help in many ways. MNSU's serials collection development policy includes criteria for adding and cancelling serials. By explicit reference to these criteria, we can understand our own position in a negotiation more clearly and which terms to prioritize.

By the way, I want to thank my colleague, Lisa Baures, for her work on MNSU's serials collection development policy. She drafted the latest version last year by synthesizing previous materials and augmenting them in consultation with me.



This policy can also be helpful if we need to explain to stakeholders why a negotiation can't be completed successfully. This comes up most often for me when I'm negotiating scope of access and the costs associated with scope of access, like the example on the screen. With maybe one or a few exceptions, at MNSU, we seek university wide access for all online resources, but the pricing for a resource must align with the expected user base, which can be small for some resources. If the pricing doesn't align, then we won't add the resource. I rely on the policy to inform my negotiation, but I can also rely on the policy to explain to stakeholders why we didn't add the resource if a negotiation was unsuccessful.



In addition to policies, I think standing guidelines can be very helpful. For example, the JRC has a standing guideline stating that the inflation cap for a subject journal package should be 4% or less. Multidisciplinary packages should be 3% or less. If the inflation cap is higher, then the package will be brought up for cancellation review unless there is something special about the deal or the circumstances.

I think it's important to remember that a negotiation is not a contest between a Librarian and a sales rep. Actually, it's best when we're partners with the objective of making a deal. When there is a pricing guideline, I can simply tell my negotiating partner, 'Hey, look, this is what my organization requires' — and my partner can then tell me what their organization is able to do. We're working together to find a way forward between the rock of my organization and the hard place of theirs.

In some cases, certain sales reps have even pre-negotiated with their own pricing folks, as you can see in example 2.



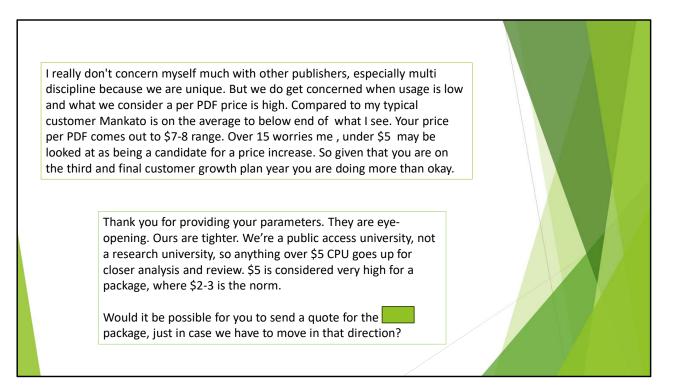
Collection analysis is extremely important to provide the basis for negotiations. Of course, it's essential to understand the value provided by a deal if you're going to negotiate it. Otherwise, you're just shooting in the dark.

Subject Area	Elsevier	IEEE	Sage	Springer	Taylor & Francis	Wiley	
Agricultural and Biological Sciences	28%	0%	-	9%		15%	
Arts and Humanities	6%	0%		5%		10%	
Biochemistry, Genetics and Molecular Biology	33%	0%		11%		20%	
Business, Management and Accounting	19%	1%		3%		9%	
Chemical Engineering	50%	0%	2%	6%		12%	
Chemistry	36%	0%	0%	12%	3%	12%	
Computer Science	41%	14%	4%	8%	9%	4%	
Decision Sciences	31%	3%	3%	4%	10%	8%	
Dentistry	17%	0%	2%	8%	1%	62%	
Earth and Planetary Sciences	34%	1%	1%	8%	10%	10%	
Economics, Econometrics and Finance	24%	0%	8%	7%	6%	9%	
Energy	76%	7%	0%	2%	3%	3%	
Engineering	38%	21%	2%	5%	8%	5%	
Environmental Science	39%	0%	3%	11%	8%	12%	
Health Professions	13%	0%	10%	6%	18%	4%	
Immunology and Microbiology	33%	0%	0%	12%	3%	14%	
Materials Science	50%	14%	1%	6%	3%	8%	
Mathematics	33%	8%	2%	15%	11%	7%	
Medicine	18%	0%	8%	7%	7%	15%	
Multidisciplinary	2%	0%	0%	20%	0%	0%	
Neuroscience	40%	0%	5%	7%	5%	18%	A V

MNSU has built a number of tools to understand the value of deals. I'll provide a link to more information at the end of this presentation. Here, you can see an example of how we've analyzed our library's usage per subject per package. For this example, I've narrowed on just the library's most expensive deals. When you understand the value of a deal, it's easier to put a price on it.

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FULL2013WB Journal of Zoological Systematics and Evolutionary Research
                                                                                                                                                                                                    AY22
JZS
            9475745
                                                                                                                       Dropped With Hindawi
NER
PPI
                       FULL2013WB Neuromodulation: Technology at the Neural Interface
FULL2013WB Psychotherapy and Politics International
            10947159
                                                                                                                       Dropped Transferring to Elsevier
            14769263
                                                                                                                       Dropped Cessation
SOCA
            14698676 FULL2013WB Social Anthropology (Electronic)
                                                                                                                       Dropped Transferring to Berghahn Books
                        FULL2013WB
                                                                                                                       Dropped
TBJ
            1075122X FULL2013WB The Breast Journal
                                                                                                                       Dropped With Hindawi
                                                                                                                                                                                                    AY22
            9340874
                        FULL2013WB Transplant International
                                                                                                                       Dropped TBC
                                                                                                                       Dropped
                                                                                                                                 Cessation (no longer a MJ with VOX)
YGH2
            14781239 FULL2013WB Gastrohep (Electronic)
                                                                                                                       Dropped Previously Opt-in, now OA with Hindawi
                                                                                                                                                                                                    AY22
            1521415X FULL2013WB Biologie in unserer Zeit (BIUZ) (Electronic)
0065101X FULL2013WB Acta Archaeologica
                                                                                                                       Dropped Transferred Out
Dropped Transferred Out
                                                                                                                      Dropped Transferred Out
Dropped Transferred Out
AJPY
            49530
                        FULL2013WB Australian Journal of Psychology
                                                                                                                                                                                                    AY21
BJS
                        FULL2013WB British Journal of Surgery
                                                                                                                       Dropped Transferred Out
            10156305 FULL2013WB Brain Pathology
15356841 FULL2013WB City & Community
                                                                                                                       Dropped Open Access
Dropped Transferred Out
RPΔ
CICO
            13284207
                       FULL2013WB Clinical Psychologist
                                                                                                                       Dropped Transferred Out
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            9695893
111953
                        FULL2013WB Clinical Psychology: Science and Practice
                        FULL2013WB CrossCurrents
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Dropped Transferred Out
            8164622
                        FULL2013WB Clinical and Experimental Optometry
                                                                                                                                                                                                    AY21
IJNA
IJPP
            10572414
                       FULL2013WB International Journal of Nautical Archaeology
            9617671
                       FULL2013WB International Journal of Pharmacy Practice
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                                                                                                                                                                                                    AY21
            17424801 FULL2013WB International Wound Journal
                                                                                                                      Dropped Open Access
Dropped Title Ceased
                        FULL2013WB International Zoo Yearbook
            3018121 FULL2013WB Journal of Chinese Philosophy
JOCP
                                                                                                                       Dropped Transferred Out
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JPHP
JPHS
            223573
17598885
                        FULL2013WB Journal of Pharmacy and Pharmacology
                       2015FUL13U Journal of Pharmaceutical Health Services Research
                                                                                                                       Dropped Transferred Out
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            8938849 FULL2013WB Journal of the World Aquaculture Society
                                                                                                                      Dropped Open Access
Dropped Title Ceased
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                       FULL2013WB Negotiation and Conflict Management Research
NRM
            8908575
                        FULL2013WB Natural Resource Modeling
                                                                                                                       Dropped Open Access
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                        FULL2013WB European Journal of Personality
2015FUL13U Wind Energy
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WUSA
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                        FULL2013WB The Yale Review
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            1082720X FULL2013WB Annals of Noninvasive Electrocardiology
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            760730
                        FULL 2013WB Rulletin of the Institute of Classical Studies
            1747079X FULL2013WB Concenital Heart Disease
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Even without extensive collection analysis, one can perform simple analyses to inform negotiations. For example, a couple of years ago, I analyzed transfers out of a journal package to help me make an argument that the vendor should lower the inflation cap. After several rounds of discussion, the sales rep brought their manager to a meeting where, after some additional back and forth, they offered to move us to the database model at no additional charge, so long as I agreed to the inflation cap. This offer was helpful to my Library because we gained 182 journals, many of which are very useful on our campus. At the same time, I think this deal helped my negotiating partners meet their own targets.



One can also use something as simple as cost per usage, or CPU, to start a conversation. In one case, I inherited a bad deal pre-negotiated by somebody else on campus. Two years into the three year deal, I sought better terms -- even though, technically, I had no real right or leverage to change the deal. I started by questioning the CPU of the deal as compared with other deals, but the rep seemed adamant they would not negotiate. You can see their response in the upper left corner. My approach in cases like these is to hang on and try to explain myself better. If there's an option to cancel or change the package, I might also gently remind the sales rep that I've got other options.



As I said before, it's important to remember that the sales rep can be a partner. The sales rep is not the enemy. Most reps will usually do what they can to make a deal, within reason. In this example, we exchanged several more emails, then we met. The conversation was amicable. The rep agreed to reduce our fees while I agreed to extend the deal by a year.

By the way, I'm hiding some identifiers just to maintain the privacy of my correspondents or associates. You'll notice we were called the University of Minnesota – Mankato in this message. That happens a lot, but we really are Minnesota State University Mankato.



MNSU's licensing toolkit is pretty brief, but it's still very helpful. In our toolkit, we list the terms we typically see as causes for concern. We also list our preferred terms and we include examples of previously successful messages for negotiating these terms.

# Concern 1

# **Authorized Site**

Does the definition of "site" absolutely exclude distance education students at leased locations outside of a single geographic location?

Is there any provision in the license to declare distance education locations?

NOTE: In the license, be sensitive to the use of the words "sites" and "campuses" as it relates to physical sites, multi-site, and individual administrative units.

### Rationale

It is important to note even though MSU, Mankato leases teaching facilities in a few different geographic locations, this does not entail registering users and providing the attendant administrative services via a separate site. Multi-site typically refers to multiple campuses which may or may not be independently administered but nevertheless include additional users, a delineation enabling vendors to understandably collect extra fees.

## Desired Language:

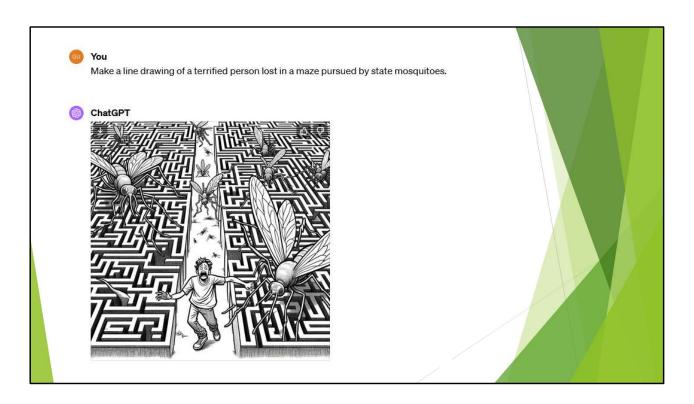
For the avoidance of doubt, the Institutional Subscriber is a single institution administered centrally as a single library on a single campus, although secure proxy access is provided to off-campus users and locations, including leased

On the screen, I've provided a snip from our toolkit section on Site. I discussed site definitions and transfer obligations during my October presentation for this Lunch & Learn series. I don't have time to dive into the terms in our toolkit now. My point is just to make it clear how helpful it is to use a toolkit.

Libraries can save time and build on previous negotiation successes by maintaining a licensing toolkit. By the way, I have to thank my colleague, Lisa Baures, once again, for her work on the MNSU journal licensing toolkit. She drafted the toolkit using examples I provided while we were pursing a comprehensive journal license review together a few years back.

# Tactical Priorities

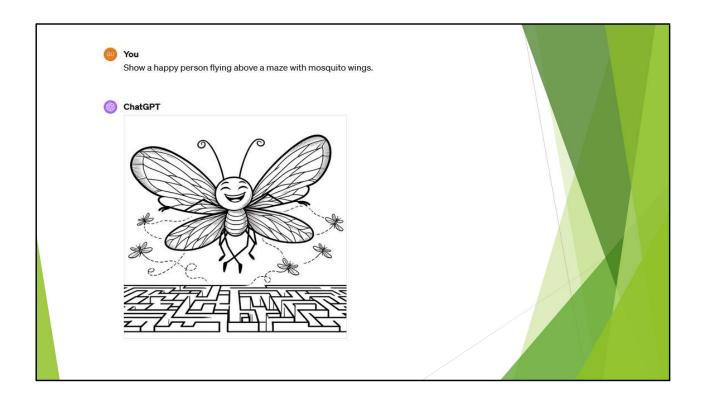
At MNSU, the negotiation of licenses is complicated. There are state, system, and university level problems that drastically hinder successful and timely license negotiation and execution. I would guess that most Libraries must also contend with arbitrary, but decisive factors, constraining licensing negotiation, such as organizational issues or problematic counsel. Even without such hindrances, Libraries might need to make tactical decisions about what to prioritize in any given negotiation. My point in this section is simply to say I think it's important to recognize one's contextual conditions and to focus effort where it can be effective, or to find paths around known problems.



That said, these contextual conditions will vary quite a bit from Library to Library. I think there are probably a multitude of contextual conditions we could discuss. We have bureaucracy problems here at MNSU. Licenses often take 3-6 months to complete, sometimes much more. For licenses with cumulative costs greater than \$100,000, vendors must also complete a workforce certification through the Minnesota Dept of Human Rights before the license can be signed. This can be a very lengthy and expensive process for the vendor. In a recent case, one of our vendors needed to hire in-state counsel to pursue this process, which has only just been completed 10 months after they first started. Because we can't complete licenses without this certification, our students can lose access to course materials.



Just think about that for a second. Our students and faculty can lose access to <u>scholarly</u> <u>journals</u>, the most basic of course materials aside from textbooks, because of state laws.

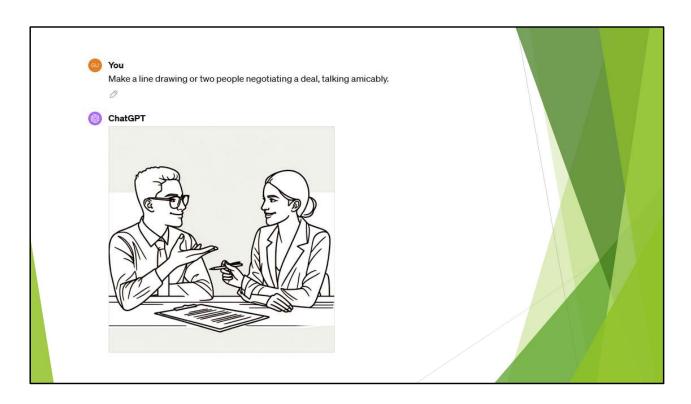


So then, I must think about how to pursue licenses given my contextual conditions. In general, I might prefer one-year licenses renewable by amendment or by placing an order, because these would give the Library more flexibility to manage the budget. However, annual renewals might not be completable on time, so instead I've recently developed a tactical priority. I now prefer multi-year agreements, the longer the better, to avoid annual delays. But I now also prioritize reasonable financial hardship clauses, so that we can still manage the budget responsibly. In some cases, this approach might even be the best option. It might be better to pursue longer agreements if these are tied to better inflation caps or other advantages, so long as the financial hardship clauses are adequate.

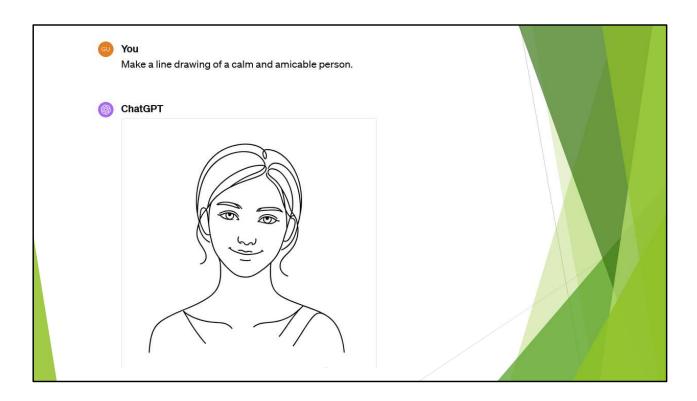
I could similarly tell stories about why I've developed tactical priorities on non-disclosure, data privacy, accessibility, and rights generally, but I'm sure most licensing librarians could also tell stories.



There are many books on negotiation, although I'm afraid I haven't read one since I was fourteen. I'll just say briefly what I think has worked for me...



I prefer to be as candid and direct as possible. One doesn't usually negotiate just one deal with a sales rep. I think it's important to try to develop an amicable relationship with a sales rep over time, even if that just means exchanging pleasant emails. I think it's easier for both parties to compromise if they have some positive impression of each other, possibly even trust. At the same time, I think it's fine to ask for concessions directly. The vendor won't know what you need unless you tell them – and it's often helpful to continue explaining your need even if they don't respond favorably at first. If you have other options, it can also sometimes be helpful to remind your negotiating partner you might need to go in another direction. For journal packages, one gentle approach is to ask for post cancellation entitlement lists or individual pricing for journals in case you need to leave a deal.



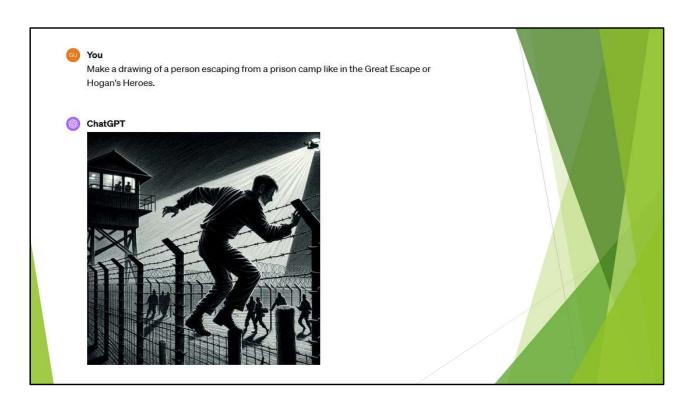
I've previously mentioned that I try to use evidence when I make arguments. I think it's important to make arguments, to take the time to think through what's happening in any given deal, especially the flaws or problems, such as the impact of transfers out of the deal, costly transfers into the deal, or comparatively bad cost-per-usage. By drawing attention to these problems, you can often come to better terms. That said, I won't argue in the negative sense. I stay calm and amicable. In general, I think a principle of amicable, non-attachment is best, if one can achieve it. Stick to the evidence, the argument, and a positive attitude.

By the way, I was glancing through a book on communication recently, where it was claimed that smiling while talking changes your tone of voice, which can help you to be more influential.

... Or anyway, it makes you feel better to smile, so it's a good thing to do whenever you get a chance.



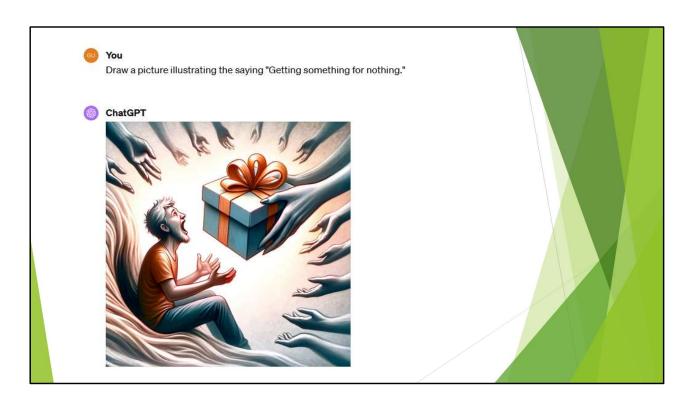
There are also all sorts of little things. For example, at a certain stage in the conversation, I think it's often best to be quiet, to wait, to let the other side talk. When people talk a lot, they usually give things away. When the sales rep schedules a live meeting or brings in the manager, it could mean they're bringing in the big guns, but I prefer to think it means they're ready to make concessions. In these meetings, there can sometimes be a lot of bluster at the start, but if you sit firm and quiet except to reinforce or supplement your own argument, it's been my experience that a better offer is usually, eventually made. At these times, I think it's important, always, to express my understanding that the vendor must also succeed. I don't want to "win"—I want to help them make a deal with me.



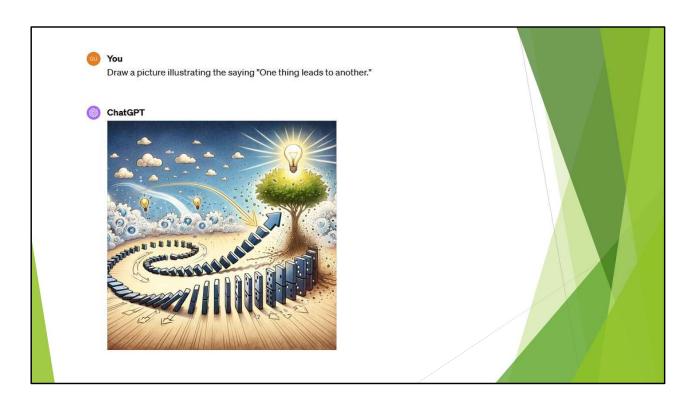
Sometimes, of course, you'll get a bad negotiating partner, somebody who doesn't know how to make a deal, but that's rare – in those cases, I look for the exit or I start planning my escape.



Although I think it's important to develop amicable relationships with negotiating partners, I should be clear I don't think it's my job to do their job for them — which is to say, sometimes sales reps give away more than they should, and I think it's okay just to say okay.

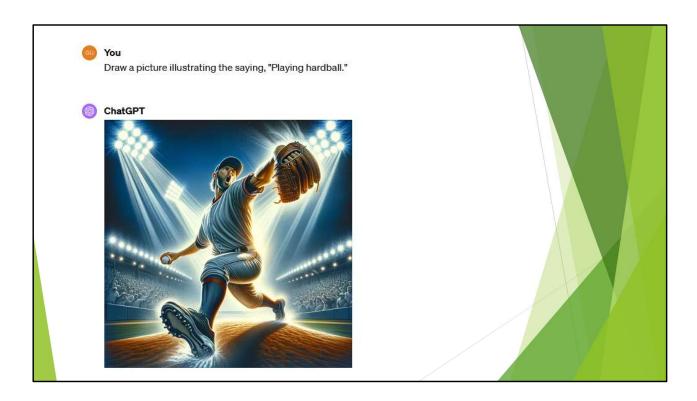


Several years ago, I started a conversation with a sales rep about forming a big deal. They were new to their job. We talked a few times via email and then we met at a conference. Typically, when entering a big deal, a Library commits to continue the existing subscriptions, or the spend for those subscriptions, and then the Library agrees to pay an additional fee for access to most or all of the publisher's other journals. In this real-life case, however, the sales rep didn't ask for the additional fee. They asked only to lock us into our existing spend. Of course, I said yes. By forming the deal, I was also able to cap inflation favorably – there was no downside at all. MNSU gained well over a thousand journals at no added cost. This kind of favorable opportunity isn't very common, but it wasn't unique either. Actually, I did even better with one of our other big deals. These things do happen – the important thing is to know your own business and to look out for opportunities.

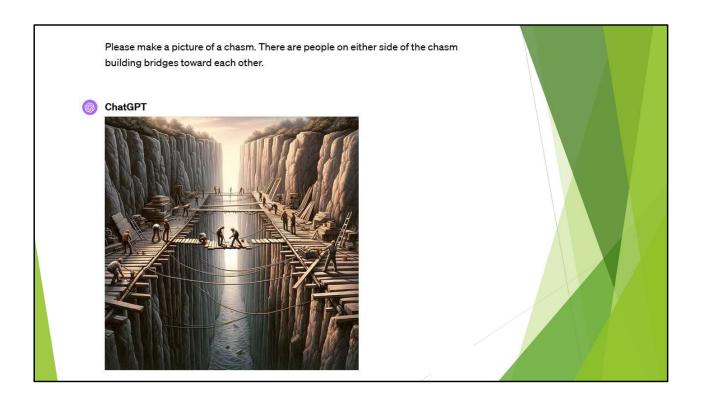


A few years ago, frustrated by surprise costs related to transfers, I started seeking fixed or static lists from some vendors. I completed 3 static list deals – and actually, Minitex negotiated one of these. Over time, I think the vendors realized that static lists are expensive for them to maintain, just in terms of labor, so all 3 vendors have offered very favorable terms to move on from the static lists. In the 2 cases I negotiated, I was offered database models at no additional charge and no increase to inflation. In the 1 case negotiated by Minitex, I was offered a database model with only a slight increase to inflation. In all 3 of these cases, my library gained numerous journals at no cost or low cost.

Anyway, the point here is that one thing leads to another in real life. So long as you are paying attention and you know your business, I think opportunities present themselves, probably more often than you'd think. You've just got to see them and act.



I should mention that I can play hardball, even if it's not my first choice. But this is real life and I think any negotiator should be prepared to play hardball. I usually only do so when there is cause. Years ago, our subscription agent raised our surcharge from 4.5% to 4.95% without telling us. I noticed it when I received the bill for the individual subscriptions they handled. I hadn't yet renewed the 3 big deals we had with them, so I proceeded to yank them. I got a call from a manager almost immediately, offering to lower the surcharge to 1.95% if I let them handle the big deals again. Because I had several hundred individual subs with them at the time, I said yes, but I also starting planning my escape. That's a different story though, maybe for another day.



That said, it's important to remember the point of negotiation. The point, in my view, is not to "win." The point is to make a deal. At MNSU, we are seeking agreements for no more than 5 years to purchase or subscribe to resources for students. The deal doesn't have to be perfect, so long as it is good enough. The deal must address the substantive issues, especially any cost and payment risks, but I can compromise in other areas. Compromise is not a vice or a weakness — it's a constructive approach that leads to better results for all.



Finally, I want to mention I saw an interesting article as I finished preparing this presentation. It discussed how Generative AI can contribute to more successful, quicker negotiations... The article was in Forbes and based on research reported in a book by Keld Jensen entitled *Negotiation Essentials*. I've provided a snippet from the article on this slide. I'm eager to test this for myself. But that's a topic for another day...



Thank you for bearing with me. You can reach me at gustan2@mnsu.edu if you'd like to talk. If you'd like more information about our library's work on collections, licensing, or collection analysis, you can find a reference list at libguides.mnsu.edu/collection-analysis/research. I'd also like to thank Dall-E 3 for illustrating many of my slides. Actually, if you're interested in Library applications of Dall-E 3, you might want to check out a talk I'm giving with a colleague for the SUNYLA online conference on Feb 2. Our presentation is entitled "Novelty Visualizations of Collections Data: Real Impact or Comic Interlude?" The SUNYLA conference is free to attend and, last year, I thought it was quite good.

Thanks again!