

2015

## 2C Negotiation Methods and Theory

Ellen Finnie

*Massachusetts Institute of Technology*, [efinnie@mit.edu](mailto:efinnie@mit.edu)

Follow this and additional works at: <https://scholarworks.umass.edu/cbc>

 Part of the [Intellectual Property Law Commons](#), and the [Scholarly Communication Commons](#)

---

Finnie, Ellen, "2C Negotiation Methods and Theory" (2015). *New England Copyright Boot Camp*. 17.  
Retrieved from <https://scholarworks.umass.edu/cbc/17>

This Article is brought to you for free and open access by the University Libraries at ScholarWorks@UMass Amherst. It has been accepted for inclusion in New England Copyright Boot Camp by an authorized administrator of ScholarWorks@UMass Amherst. For more information, please contact [scholarworks@library.umass.edu](mailto:scholarworks@library.umass.edu).

**ACRL NE**  
**Copyright Workshop: day 2**  
**Advanced Topics**

Negotiation methods and theory

Ellen Finnie    [efinnie@MIT.edu](mailto:efinnie@MIT.edu)

# Standard ways to negotiate

- People tend to see 2 ways to negotiate:
  - Soft
    - Wants to avoid personal conflict
    - Makes concessions readily
    - Often ends up feeling exploited, bitter
  - Hard
    - Contest of wills
    - Winning by taking more extreme position, holding out longer
    - Often harms relationship
  - Other strategies fall in between
    - All have trade-off: getting what you want and getting along

# Negotiation goals

- Produce a wise agreement
- Efficiently
- While improving or not damaging relationship

Adapted from: Getting to Yes: Negotiating Agreement Without Giving In, By Roger Fisher, William Ury, and Bruce Patton, 2011 revision. Penguin Books.

# Beyond position-based bargaining

- Successively taking and then giving up a sequence of positions
  - Produces unwise outcomes – locks you in
  - Is inefficient – moving from extreme to less extreme, making small concessions
  - Endangers ongoing relationship
  - Being nice (soft) makes you vulnerable to someone taking hard approach
  - Positions often obscure what you really want

Adapted from: Getting to Yes: Negotiating Agreement Without Giving In,  
By Roger Fisher, William Ury, and Bruce Patton, 2011 revision. Penguin  
Books.

# The Alternative: Principled negotiation

- Hard on the merits; soft on the people
- Separate the people from the problem
- Focus on interests, not positions
  - Avoid having a bottom line
- Invent multiple options – looking for mutual gains
- Use objective standards to evaluate
  - Model language from large associations/organizations offers objective standard

# Interests v. Positions

Interests	Positions	Examples of Solutions to meet mutual interests
Stay within budget	“We will not accept any multi-year deals”  “We will not enter ‘big deals’”	Vendor wants to reserve best terms for cases where there is an ongoing commitment of revenue.  Strong & flexible exit clause language may allow for multi-year, big deal where that makes sense for the content.
Reduce burdens on researchers  Maintain flexibility of fair use in licenses	“We won’t sign a contract that doesn’t mention fair use”	Vendor operates globally and does not want to reference a US legal concept in all contracts.  Scholarly sharing language and/or participation in IASTM policy statement on reuse* may achieve comparable goal.

\* see: [http://www.stm-assoc.org/2008\\_02\\_01\\_Guidelines\\_for\\_Quotation\\_From\\_Journal\\_Articles.pdf](http://www.stm-assoc.org/2008_02_01_Guidelines_for_Quotation_From_Journal_Articles.pdf)

# Interests v. Positions

Interests	Positions	Examples of Solutions to meet mutual interests
Support international community of learners	“We must have international ILL”	<p>Vendor has document delivery contracts in Europe that would be undermined by ILL language and cause loss of business.</p> <p>Language allowing sharing with academic libraries only, without reference to 108, could be a compromise.</p>
Maximize reach of institution’s research	“There is one way to cooperate with our campus open access policy.”	<p>Vendor is concerned about loss of revenue if papers are shared at time of publication.</p> <p>Autodeposit by publisher after an embargo could be a mutual win. Providing publisher with data on use in repository could be a negotiating point.</p>

# Interests v. Positions

Interests	Positions	Examples of Solutions to meet mutual interests
Position ourselves to meet current (and anticipated future) researcher needs	“We must be able to load the content locally when subscribed access ends.”	<p>Vendor not comfortable or technically capable of providing local copies. Vendor has made 3<sup>rd</sup> party archiving arrangements.</p> <p>Third party archival solution such as PORTICO could be mutually acceptable. Including language within the contract about 3<sup>rd</sup> party arrangements – not just as a note posted on a website – could be mutually acceptable.</p>

# Exercise

- Find a partner
- Select one of the scholarly communication related licensing topics
- One person is a particular publisher; one person is licensing librarian
  - Take time to separately brainstorm mutual interests and likely concerns
- Carry out a principled negotiation
- If time: Select another topic; Reverse roles, and repeat
- Report back – what worked? What didn't? What was hard? What language did you agree on?