

License Negotiation Strategy Session – ORALL 2014

This handout suggests various strategies and approaches you might incorporate or be on guard against as you negotiate agreements on behalf of your law library. Following the program, this handout will be revised to incorporate the ideas and suggestions of audience members. The revised handout will be distributed to ORALL attendees following the conference.

License Negotiation Strategy Tips

- *Have a list of utterly unacceptable terms—where must you be completely inflexible? What are your sticking points?*
- *Prepare.*
 - a. *Consider usage stats if they are available to you.*
 - b. *Assess the license terms before any negotiation conversations.*
 - c. *Be comfortable declining a cold call until you are ready to negotiate.*
- *Know your requirements. Insist on them.*
- *Use legal counsel to your advantage. Work with them if possible. For example, build a relationship with your legal counsel and know when you can say things like, “It’s not me insisting on this; it’s our library’s counsel. I’ll have to run it by them.”*
- *Self advocate. Trust your gut. You know your users and your budget.*
- **Statistics:** *Try to base price on REAL use rather than SPECULATIVE USE. It seems this is more possible for firms and government libraries...why academic law libraries?*
 - a. *Know if you will even have access to usage stats. Consider negotiating for usage stats or separate software for tracking usage.*
 - b. *Assess strategies that are more or less effective with different vendors who are declining to provide stats or say it is “not possible.” While it might be technologically difficult (e.g., at law schools vs. at law firms), the vendor may not be saying it is not a deal term they can agree to.*
 - i. *Lexis: PowerInvoice – “PowerInvoice is a secured, browser-based service containing LexisNexis® billing data and electronic LexisNexis invoices. Information covers activity that may be as recent as 24 to 48 hours. PowerInvoice maintains up to 24 months of invoice data and 12 months plus the current month of billing data. The PowerInvoice service provides a variety of search and delivery tools that let you find and manage the billing information you need.”*
 1. *Here is an old (2001) PowerPoint presentation on PowerInvoice:*
http://www.powershow.com/view/be5c9-Zjc1Y/LEXISNEXIS_Usage_Statistics_powerpoint_ppt_presentation
 2. *Here is a current PowerInvoice User Guide:*
<http://law.lexisnexis.com/infopro/files/LP17668-3.pdf>
 - ii. *Westlaw: Quickview+*
 1. *Here is an FAQ on Westlaw’s Quickview+:*
https://www.quickview.com/Help/WEST_1_FAQ.aspx, which states “Usage information is available for the current month, as well as for the previous six months.”

- c. *Consider separate software for tracking usage*
 - i. *OneLog*
 - ii. *Research Monitor*
 - iii. *These are software tools that track use and can be used for password management. In the law firm setting, these tools track who is using catalogs, etc. and are put on every law firm computer.*
- d. *Strategy for acquiring statistics: Tell the vendor you need the data in order to better train patrons/database users. If you don't know what they are or are not accessing, how can you target a session to improve users' access to and use of a software tool?*
- *Define usage rights. Know what constitutes a "permissible use." Consider how narrowly you want to define that phrase to allow a variety of usages.*
- *Consider whether when you pay (e.g., annually, monthly) will result in a price adjustment.*
 - a. *Consider including financial exigency provisions if you agree to pay annually.*
- *Establish a rapport*
 - a. *With vendor reps*
 - b. *With your counsel*
 - c. *With other patron bases (e.g., main campus, university departments)*
- *Consider asking for multiple options in contract proposals*
 - a. *Look for a variety or pricing models. E.g., X number of attorneys = Y price; #-# attorneys = P price*
- *Always read over the contract in detail – even if you're giving it to an attorney to review.*
- *Don't be afraid to walk away if you don't like the deal the vendor offers. It's not a "done deal" until it is signed.*
- *Don't be afraid to ask for what you want.*
- *Pricing (rather than particular legal terms) may be your key deal point, and that's okay.*
- *Give yourself plenty of time to reach a decision. Deadlines are rarely hard and fast. Don't let a vendor pressure you into making a decision by a certain date.*
- *Know when to consult legal counsel.*
- *Ask questions for clarification. If you're not sure what something means, ask the vendor representative for his or her interpretation and ask a colleague.*
- *Develop a strategy in advance for working with difficult vendors.*
- *Know what you may and may not do. Make a list of things that you are prohibited by law from doing. Discuss this with your counsel before going into negotiations. Make sure any larger institution with approval authority (e.g., the law firm or a board) will be willing to commit to certain terms (e.g., pricing).*
- *Remember that you are the expert on what resources your users need.*
- *Be clear about what you are asking for. Read through any language added to the contract to ensure it reflects what you've proposed.*
- *Ask vendors to be clear about what they are offering.*
- *Try to change and soften any absolute and constricting language.*
- *Watch for unreasonable time restrictions, such as a 90-day notification window at renewal time.*
- *Ask for free trials of the product, and be sure to use them. Ask for extensions of the trial if needed.*
- *Consider agreeing to a longer term if you're able to get a smaller starting point price and annual increases. You can sometimes get free months of service when negotiating a new contract.*
- *Look for obligations imposed by the license that are in various other documents incorporated by reference.*

- Ask for multiple options (like variances in length, content, or other terms); then weigh which option works best for your library.
- Find out how the vendor's pricing works. If it is based on the number of attorneys (for firms), don't include retired attorneys. If it is based on practice groups, include only primary practice group members, not everyone listed on your firm web site in that area.

License Drafting/Mark-Up Tips

- Make sure content specifics are worded the way you want – address additions/improvements made to the product during the life of the contract.
- Specify/define users of organization.
- Most vendors use acronyms/abbreviations to list content – make sure each of those items is defined.
- Make sure names of your firms, addresses, office locations are correct.
- Make sure dates of beginning / end of contract are correct.
- If you're negotiating a renewal, ask for either an addendum to the previously-used contract, or ask for a red-lined version so you can easily see changes.
- If you are suggesting changes to the contract, ask for the contract in Word, so you can enter/change terms (track changes) and send the document back to vendor for approval.
- When you get the invoice, make sure it matches the contract.
- If you are being asked to renew, request the latest usage statistics.

Phrases to Watch For During Negotiations

- Legal won't agree to that.
- This is our pro forma contract. Everyone agrees to it.
- Of course we have to have a confidentiality clause.
- We have to complete this quickly. Your contract is about to expire.
- I've heard from your users how essential this resource is.
- Though we've increased the price for this renewal, we've improved our platform/added X amount of content. (You might not need that extra content.)
- Yes, it says that in the contract, but we won't hold you to that.

Clauses to Watch For in the Proposed Contract

- Confidentiality or nondisclosure provisions
- Contract language that states that customer/user will ensure compliance with the permissible uses. The term "ensure" implies being able to guarantee compliance without exception.
- Authorized user provisions. Confirm that the library's patrons and the vendor's authorized users are the same
- Any requirement that all vendor data must be purged from customer's document management system or other online storage service.
- Interlibrary loan or resource sharing. You may want to expressly include it.
- Personal use. Do you monitor or control the ways your patrons use a database?
- Automatic renewal. Be aware of a potential for undesired renewal and for committing your library to spending long term.
- IP addresses, logins – confirm that your library's preferred means of access can be accommodated
- Training, tutorials, and user guides. Confirm that your library's preferred means and frequency of training is accommodated.
- Hold harmless provisions, no warranties offered, and indemnification.
- Breach of contract provisions. Query what rises to the level of a breach. For example, could an individual patron or an authentication problem trigger breach?

- Jurisdiction, governing law, and dispute resolution. Your organization might not agree to out-of-state provisions.
- Lack of a financial exigency clause
- Opt-out clause. Make sure it specifies time/notice needed to exercise the opt-out.
- Beware of restrictions in the contract on cancelling other products at your library from that vendor.
- Beware of clauses that increase the price if your usage of the product is high.

Helpful Resources to Consult – A Brief Bibliography

- American Association of Law Libraries, *Procurement Toolkit and Code of Best Practices For Licensing Electronic Resources* (2013), <http://www.aallnet.org/mm/Advocacy/recommendedguidelines/procurement-toolkit.html>.
- Private Law Libraries Special Interest Section, *Negotiations in Law Libraries* (2011), <http://www.aallnet.org/mm/Publications/products/Law-Librarians-Making-Information-Work/pll-guide-6.pdf> (includes a bibliography).
- Jane Baugh, *Negotiating Vendor Contracts in Your Favor*, *SPECTRUM* (April 2011), <http://www.aallnet.org/mm/Publications/spectrum/Archives/Vol-15/No-6/April11-Yes.pdf>.
- American Association of Law Libraries, CRIV, *Checklist for the Negotiation of Internet Subscriptions* (2011), <http://www.aallnet.org/mm/Advocacy/vendorrelations/CRIV-Tools/negotiate.html>.