Teaching Copyright and Negotiation via Roleplaying

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As a copyright librarian, I teach members of the university community about copyright through both formal workshops and informal consultations. In consultations, I often hear from faculty and other scholars on campus who have questions about scholarly publishing contracts, generally of the form, “should I sign this?” I cannot give legal advice to members of the university community, so I cannot answer this question. Instead, I have created a workshop on publishing contracts to help address this need.

Original Workshop

I first developed the workshop in summer 2016. As in many workshops I offer, I divided it into two parts. First, I spoke to the participants a bit, using a slide deck. I talked about the process of publishing a scholarly article and some related copyright concerns. (I did not include a full introduction to copyright, as I regularly offer that in a separate workshop.) Then, after a break for questions, I asked participants to discuss a few hypothetical situations in small groups. I offered this version of the workshop twice, in summer and fall 2016.

I sometimes teach using hypothetical scenarios by simply describing a scenario and then posing a question. For example, I might describe a student’s use of copyrighted material and then ask if it is fair use. Or, I might ask whether material licensed under a specific Creative Commons license can be used in a hypothetical instance, or whether copyright covers a hypothetical work. These hypotheticals give participants an immediate opportunity to practice what they are learning in the workshop. This reinforces the workshop content and helps participants to see its importance.
In a few workshops, including this one on publishing contracts, I take things a step further through roleplaying. I lay out a hypothetical scenario, and then I ask the participants to imagine themselves in the scenario and decide what to do. These roleplaying exercises have all the benefits of hypotheticals for teaching copyright. In addition, they encourage the participants to think about the practical side of things and what they would actually do in a particular situation.

In my summer and fall 2016 publishing contract workshops, the first roleplaying exercise invited participants to imagine themselves on the editorial board of a journal of a fictitious learned society. In that exercise, membership dues and journal revenue (if any) were the society’s sole sources of income. The exercise asked participants to consider what provisions they would want in a publishing contract, as members of the editorial board.

Both times I offered the workshop, I gave participants some time to consider that scenario and then facilitated a group discussion. We talked about how a journal’s copyright policies, including an embargo, might impact its bottom line. We also talked about the society’s mission—might disseminating the scholarship be more important than increasing revenue? How could the society best accomplish that? How could the society ensure the continued publication of the journal? We talked about societies that had faced financial and logistical challenges in administering their journal and decided to outsource it to a commercial publisher and what they (and their disciplines) gained and lost as a result. Compared with other discussions of scholarly communications that I have had on university campuses, the discussion in each of these two workshops was much deeper because the participants had put themselves in the position of the editorial board.
Next, we explored the same scenario from authors’ perspectives. I asked participants to imagine themselves as first-time authors and then as authors who had recently been granted tenure. In each case, why were they publishing? What were they looking for in a publication venue? What contractual provisions did they absolutely need? What contractual provisions would be nice to have?

Again, this led to a rich discussion on both occasions. For most participants, envisioning themselves in these roles was quite easy—many of them were in fact first-time authors or tenured faculty. Still, this discussion was richer for them having considered the two author exercises. These exercises complemented the editorial board one nicely. Participants were able to see where the two parties’ incentives lined up and where they might diverge.

I was quite pleased with how the workshop went in summer and fall 2016. However, after the second iteration, I knew I wanted to expand it. I wanted to make the roleplaying exercises more realistic, and I wanted to add some content. The initial framing of the workshop, though it encouraged participants to think about contract contents and their consequences, did not address negotiating contracts. Yet, it was clear to me that many of the workshop participants could use help in that area. I decided to add to the workshop the basics of the negotiation techniques described in *Getting to Yes (GTY)*, the 1981 classic that has become a *lingua franca* for negotiation.⁡

**Negotiation Workshops**

I learned about *GTY* techniques in college and then came back to them several times in law school. Each time, they were taught along with a mock negotiation. Mock negotiations, which are a type of roleplaying, are quite popular as a way of teaching these techniques. My experiences with mock negotiations as a student showed me that they are also effective for
teaching the substance on which the negotiation is based. I learned family law in part by negotiating a mock divorce settlement, trademark law by negotiating a trademark license, and entertainment law by negotiating an actor’s contract. I wanted to give my workshop participants an opportunity to learn copyright law by negotiating a mock publishing contract.

Unlike the simple roleplaying exercises from my original workshop, mock negotiations require participants to have only one role (in this case, author or editor). When most participants in your audience will identify more strongly with one role (in this case, the author), this can seem like a drawback. Some people have to take the role they are not familiar with. However, if you are teaching negotiation using *GTY* tactics, this is actually quite valuable, because it teaches participants to put themselves in the shoes of their negotiation partners, a key element of *GTY*. After the mock negotiation, when participants experience the situation in the real world, they benefit regardless of whether they find themselves in the role they played in the exercise.

To accommodate a more involved roleplaying exercise and inclusion of the basic overview of *GTY* in my slide presentation, I extended the length of my workshop from 60 to 90 minutes and cut some of the copyright material from the slide presentation. I did not cut the copyright material entirely because I still wanted to provide some framing for the exercise, to guard against the spread of copyright misinformation. I then created a new, full-blown, roleplaying exercise.³ Instead of asking participants to imagine what someone in their role would seek, I gave them detailed “role sheets,” to define the roles that participants would step into for the exercise. I also provided a mock contract as the basis for the negotiation.

**Designing the Mock Negotiations**

I began by creating an exercise in which an author negotiates the publishing contract for a journal article with a member of the journal’s editorial board. I knew there would be interest in a
monograph contract exercise as well, but I also suspected the experiences were dissimilar enough that I would not do justice to either if I attempted to cover them both in a hybrid exercise. I had already experienced this tension in trying to address both in the original version of the workshop. Journal articles are used in more disciplines and their contracts are generally simpler. Since I wanted the workshop to be as discipline-neutral as possible, and I knew it would be difficult to draft a realistic mock contract that was simple enough for a short workshop, I wrote a journal article negotiation exercise first. After doing a successful workshop with the journal exercise, I created a monograph one, to be used with a slightly different slide deck.

To design the journal exercise, I began by thinking about the common questions that scholars ask about publishing contracts, as well as the questions I wish they asked more often. I also came up with an initial list of topics that I wanted to cover in the exercise. This tracked closely with the topics covered in my shortened slide deck. For instance, I knew I wanted the exercise to force questions about self-archiving, use of third-party materials, and institutional copyright policies. In the slide deck, I also planned to mention some important resources that would not come up directly in the exercise, such as SHERPA/RoMEO⁴ and various authors’ addenda.⁵

Next, I looked at several real-life publishing contracts and began writing a mock version that was shorter but still contained the key provisions I wanted to discuss. I also started drafting two role sheets (for an author and an editorial board member). I was careful to consider the interaction between the contract and both of the role sheets, going back and editing each piece of the exercise as necessary. Once I had drafted the exercise, I ran it past colleagues with experience in this area, including some at the University of Michigan Library’s publishing
division (which includes the university press). I later repeated the process to create the monograph exercise.

Role sheets are key to mock negotiations. They tell participants what motivates their character. For example, the author role sheets in both exercises begin, “You are an assistant professor at University. You were hired four years ago and had a preliminary tenure review during your third year. The result of your review was satisfactory, with particular praise for your teaching. You were encouraged to be more aggressive about publishing your research in preparation for your tenure review, which will happen in your sixth year.”

Within a mock negotiation, some information is typically provided to both parties. For instance, both parties in these negotiation exercises know that the author’s work has been accepted and the author has been sent the standard contract. However, other information appears only on one party’s role sheet. For example, in the journal exercise, the editorial board member has information about the journal’s financial situation that the author does not. Also, participants do not know what information the other party knows.

The mock contracts for both negotiations contain simplified versions of common contractual provisions. I wanted the mock contracts to be as much like real contracts as possible, while being concise enough for use during a short workshop. In recent years, there have been efforts to create model publishing contracts that are easier to understand, contain less legalistic language, and are more friendly to authors. These model characteristics are not yet typical, so I tried to avoid implementing them in the mock contracts. Nonetheless, they are relatively easy to understand, because they are short. The mock journal contract is half a page, and the mock monograph contract is two pages.

Facilitating the Negotiation Exercises
I have used both exercises several times. Since spring 2017, I have offered five workshops based on the journal article exercise, three based on the monograph exercise, and three hybrid workshops where I used a combined slide deck and participants chose which exercise to use. Most of these have been open workshops, but I have also offered the workshop for specific groups on the University of Michigan campus, including as a session of the summer First Book Workshop for first- and second-year assistant professors in the humanities and as a dedicated session for the College of Engineering, attended mostly by graduate students.

In advance of each workshop, I share the materials as links in a Google Doc and indicate that I will also bring paper copies. I try to do this for all of my workshops, to cut down on paper waste and to facilitate accessibility by allowing participants to view materials on their own devices. For these negotiation workshops, I ask participants not to look at the role sheets in advance, to preserve secrecy of the other party’s role. This seems to work well: no participant has ever mentioned that she read the role sheets ahead and spoiled their secrecy.

At the beginning of the workshop, I work hard to set a friendly tone. Many workshop participants have not done a mock negotiation before, and they can find it intimidating. With relatively small groups, it works well to begin with introductions, asking participants to share their connections to scholarly publishing. Then, I give my slide deck presentation. I spend roughly the first half of the workshop on the presentation and participant questions and the second half on the negotiation. I always reserve a bit of time, usually five to ten minutes, at the end to debrief the exercise as a group.

I keep the presentation as short as I can. If I get the sense that a particular group already knows some of my content, I cut it, either in advance or on the fly. I also tailor the presentation according to participants’ questions. However, I find most audiences need background
information in order to benefit fully from the exercise. Without this, enthusiastic roleplayers will make things up to suit their situation. Unfortunately, excessive creativity can undermine the reality of the exercise.

Publishing norms are highly discipline-specific. On the occasions when I have presented the workshop for an audience in one discipline or set of disciplines, I have tailored the presentation content appropriately. More often, I present this material as an open workshop, where participants come from many disciplines. In those cases, I give examples of how disciplines’ practices vary, defer to participants’ expertise about their own discipline, and emphasize the tactics and lessons that can be applied in many or all disciplines.

I am also careful during the presentation to tie the negotiation tips back to negotiating publishing contracts. In addition to common examples and stories from GTY, which underscore the technique’s general usefulness and relevance, I use examples from scholarly publishing. When an aspect of GTY would be difficult to implement in a publishing contract negotiation (e.g., tips for in-person or more lengthy negotiations), I acknowledge that and encourage participants to think about how to translate the tactic to their own situation. I also emphasize that understanding and roleplaying the negotiation of publishing contracts in depth will be helpful to them even if (as is often the case) the real-life negotiations they encounter later are far more cursory.

Once I have covered the background material, I pass out the exercise in hard copy and direct participants to links to digital copies in the Google Doc. I characterize the role sheets as “secret facts” and mention that it is up to them to determine how much of their role sheets to share with their partners. This instruction is usually enough to get participants in the right mode quickly. I give a time range for completing the negotiation, saving time for debriefing. I direct
participants to divide the negotiation time (between reading, strategizing, negotiating, etc.) as they see fit. If needed, I assist in pairing off attendees, and if there is an odd number of participants, I ask two people to roleplay as co-authors and negotiate with a single editor.

Once I have given the background presentation and participants have the materials, I get out of the way. I make it clear that I will answer questions from individuals and negotiation pairs, but I stop talking. The room usually spends at least five minutes in silence as participants review their role sheets and contracts. Then, partners begin to introduce themselves to each other and talk. When participants have questions, I try to answer them quickly and avoid sustained conversations with any single pair, to ensure there is time for negotiating. I also defer some questions to the debriefing portion, where appropriate.

When we debrief, I ask volunteers to talk about what went well, what went poorly, and whether there were any surprises. This generally yields a very fruitful discussion, better even than the discussions catalyzed by the shorter roleplaying exercises in the original workshops. It is particularly rich when participants are willing to share their real-life experiences. This gives the debriefing portion a slightly different flavor each time, depending on who is in the room. (For example, I have been able to draw on the experiences of countless academic authors, several library colleagues from our publishing division, and an attorney from the university general counsel’s office.) Having an open-ended debriefing portion also allows me to cover additional substantive content as needed. Oftentimes the mock contract gives someone an idea for a new question. For example, we have had excellent discussions of translation rights, reversion rights, and permissions searches during this stage.

Keys to Success
Several things contributed to the success of these exercises: making the roles relatable, imposing constraints, making the exercise realistic, carefully calibrating the level of difficulty, and revising the exercises over time.

In a mock negotiation, it helps if participants can see themselves in the characters. Attendees at my workshops typically fill a range of roles at the university: librarians, teaching faculty, researchers, graduate students, and staff. Knowing that, I made the author in both exercises a fourth-year assistant professor. I routinely see early graduate students as well as full professors at these workshops, but it has worked well to make the author roles mid-career academics. Participants who are earlier in their careers see their future selves in these roles; participants who are later in their careers see a career stage from their past, but it is not so dissimilar from their current situation that they disengage. I also made the roles in both exercises as discipline-neutral as possible, and I made the partner in the journal exercise an editorial board member of the journal of a learned society, rather than an employee of the publisher, since academics are more likely to have colleagues who are editorial board members, or to be on editorial boards themselves.

Imposing constraints in the role sheets is also important. This helps avert one of the most common problems with a roleplaying negotiation: participants, especially those who are naturally agreeable, can give in very easily when nothing real is at stake. Putting constraints in the role sheet and emphasizing the role sheet as a way to get into character ameliorates this. (When roleplaying negotiations can be tied to real-world incentives, as in a graded course or a competition, that also diminishes this problem.) In both my exercises, the authors are under heightened pressure to publish due to upcoming tenure review. Other constraints in the author role sheets include a need to use a few third-party images or figures for which the author has
been unable to clear copyright, a university copyright policy that reserves some rights in faculty scholarship, and a desire (framed differently in the two exercises) to make the work available to people who cannot afford paid-for access.

The editor and the editorial board member also have constraints. In the journal article exercise, the editorial board member’s role sheet says that the president of the society will have to sign off on any changes to the default contract. The president will review changes carefully, but she will not typically second-guess the editorial board member. I do this to give the editorial board member room to be creative and authority to negotiate, while underscoring the importance of keeping the learned society’s best interests in mind. I also provide details about the society’s financial situation, and I impose a realistic requirement from a publisher that handles much of the publishing process on behalf of the society that the society indemnify it. That gives the editorial board member a strong incentive to preserve a clause in the mock contract where the author indemnifies the society for breach of warranty.

In the monograph exercise, as in the journal one, the editor is not the final decision maker. The editor has the authority to negotiate modifications to the contract, but those modifications have to be approved by the director of the press and by its institution’s Office of General Counsel. This contributes to the exercise’s realism, since academic authors rarely negotiate personally with someone who has complete authority. I also include information about the publication timeline (the proposed deadline in the mock contract has leeway built into it, but receiving the manuscript very late would impact other press projects) and sales data. Finally, I give the press a mission: “Press has a mandate from [its institution] to make scholarly knowledge widely available at low cost, while keeping its budget balanced.”
So long as the participants take the role sheets seriously, these constraints prevent them from being overly agreeable.

Constraints are also valuable because they make the exercise realistic. Pressure to publish is real, and a roleplaying exercise that neglected it would be inaccurate and would not prepare participants for real negotiations. By making the roleplaying exercise realistic, I was able to reinforce participants’ understanding of substantive information as well as negotiation techniques. Being realistic meant increasing the complexity and length of the exercise. The three short roleplaying questions in the original summer and fall 2016 workshops totaled under 200 words. The mock negotiations are over 1,000 (in the case of the journal exercise) or 1,500 (in the case of the monograph exercise) words. Even so, as mentioned above, both mock contracts are quite short in comparison to the real thing. (The role sheets, too, are simplifications, but participants are able to flesh out the characters from their own experience and typically need little encouragement to do so.)

Setting the level of difficulty of the negotiation is also important. In a mock negotiation, reaching an agreement should be possible, but it should not be easy. If agreement is too easy, participants will not engage deeply with the exercise. If agreement on the face of the exercise is difficult or impossible, participants may give up, or they may start bending the exercise, which can then make it too easy. To strike the right balance, both sides should have opportunities to make concessions and to stand firm. In the context of GTY’s interest-based negotiation technique, this means giving the parties interests that they care about to varying degrees. In the role sheets, some constraints are necessities, while others are preferences.

Finally, I have refined both negotiation exercises, the accompanying slides, and my presentation of the workshop over time, based on feedback from colleagues and workshop
participants. For instance, I added a reversion clause to the monograph contract and loosened the future works clause. Both these changes were intended to make the monograph contract more realistic. I have also changed how I structure the slide presentation. I now present the negotiation tactics first, followed by the copyright portion. This helps me manage time better, since I generally get fewer questions during that portion. It also helps me to engage participants, since the negotiation material is entirely new to many of them.

In my most recent iteration of this workshop, I experimented with assigning roles and sharing the negotiation exercise at the beginning of the workshop, so that participants have a better idea of what to expect and can think about their role as I go through the slide presentation. It worked well, and I will likely repeat it in the future.

Impact

Many participants have told me how much they enjoyed these negotiation workshops. As a teacher, I could not ask for a better result. I am certain that this helps participants retain the material, and it also helps me to build relationships with them. They come back to me with questions, they refer their colleagues, and they help to publicize future workshops.

I have had a few participants leave the workshops early, either shortly after I went over the roleplaying format or after the slide presentation, just before the roleplaying exercise. I attribute this in part to the enjoyable nature of roleplaying exercises and their rareness in academic library workshops. They can seem like a frivolity, rather than a serious teaching tool. I have heard from several participants that they felt a bit silly at the outset of the roleplaying exercises and were surprised in the end at how rewarding they were. I now mention this in the beginning of each workshop. I also tell participants that roleplaying exercises are a common tool for teaching negotiation, and that I learned negotiation through roleplaying. These measures
seem to have made a difference. In addition, addressing this issue is one reason I experimented with introducing the roleplaying materials earlier in the workshop, so participants would see the connection between the presentation and the roleplaying exercise better.

I have seen high demand, both in registrations for open workshops and in requests for customized private ones. Since former participants are happy to help with publicity, I reach increasingly broad audiences. In addition to drawing in more participants for the workshops themselves, this has led to more participants in other workshops and to a greater number of contract-related consultations (both with workshop participants and with others).

Consultations with people who have participated in these workshops are a joy. The background provided by the workshop enables them to ask useful questions, both of me and of their publisher. Although I do not give them legal advice, they get what they need to make their own decisions. What is more, these consultations are an excellent source of feedback on the workshop materials, feedback I then incorporate into future versions. My initial goal of helping patrons with publishing contracts without giving legal advice has definitely been met.

An unexpected, but very encouraging, piece of feedback was that the workshops cause participants to see that there are real people on the other side of these negotiations, and I have heard several variations on this theme. For some, the revelation is that their editor has needs and vulnerabilities. This makes the process less scary for them as authors, and it encourages them to stand up for what they want. For others, realizing that there is a real person reading their emails spurs them to politeness. That this has been a revelation for so many participants shows how bad things have gotten—indeed, many publishers even cultivate an impersonal attitude by situating the publishing agreement within the submission form or presenting it to the author with only a
checkbox, no opportunity for discussion or negotiation. However, *GTY* is heartening here.

Politeness makes a difference during a negotiation, and so does standing up for yourself.

Given the success of these mock negotiations, I am looking for other opportunities to increase my use of roleplaying in teaching copyright. Next up is the expansion of a set of basic roleplaying exercises that teach participants to teach others about copyright. I look forward to seeing how the benefits of roleplaying play out in that context.

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1 At time of writing, and while developing the workshops, I was a Copyright Specialist at the University of Michigan Library. At time of publication, I am the Scholarly Communications Outreach Librarian at the Pennsylvania State University Libraries. My thanks go to Jack Bernard, Justin Bonfiglio, Erin Ellis, Mary Francis, Meredith Kahn, Melissa Levine, Jim Ottaviani, Kevin Smith, Rebecca Welzenbach, and Katie Zimmerman, who provided helpful feedback on the workshop materials and this case study.


4 SHERPA/RoMEO is a database of the copyright policies of scholarly journals. See SHERPA/RoMEO, http://www.sherpa.ac.uk/romeo/index.php.


