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**Breakout Session: Negotiating Publishing Contracts.
Presented by Ana Enriquez, Copyright Specialist,
University of Michigan Library Copyright Office.**

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Negotiating Publishing Contracts

The workshop Ana Enriquez provided is one she uses with faculty and graduate students at the University of Michigan. The workshop provides participants with the following:

- Information about negotiations, publishing contracts, and copyright
- An exercise to let them practice using the new information
- A chance to discuss leading these sorts of workshops at their home institutions

Ana based the workshop on the negotiation technique from the book *Getting to Yes* by Roger Fisher, William Ury, and Bruce Patton. The beauty of this technique is that it promotes a win-win scenario. Both sides can know the technique and still reach an agreement. The book was originally published in the 1980s and has been popular in law and business schools since then.

This workshop focuses on the author's point of view. Journal articles were the primary focus; monographs were mentioned in the discussion, but were not central to Ana's presentation.

Ana introduced basic negotiation tactics with a parable about two young sisters sharing an orange; they disagreed over who should have more

and decided to split it in half. The younger girl tossed the inside of the orange and used the rind in a cake. The older ate the inside of her half and tossed the rind. If they had talked (negotiated) about what they wanted, they would have each received more and made better use of the orange.

The primary points Ana made about negotiations were as follows:

- Separate the people from the problem.
- Focus on interests, not positions.
- Invent options for mutual gain.
- Insist on objective criteria.
- Have a best alternative to a negotiated agreement (BATNA) ready.

Ana shared some more practical tips, such as sitting on the same side of the table as the other party and looking at the white board or monitor together. One party can also ask the publisher/other party to help solve the problem or answer the question. Determining what the publisher is most interested in will also help both parties figure out their priorities and find places where their interests overlap.

Once the group had discussed these negotiating techniques, Ana moved on to cover copyright and resources associated with publisher negotiations. These included:

- SHERPA/RoMEO
- Common agreement provisions
- Addenda

Ana and the participants agreed that getting the author to think through what they want from the publisher is the most difficult part of this endeavor. Getting them to think about it before they submit is even harder. This is when librarians can help authors by helping them see what is possible, what they want or are required to do, and what their fallback position might be.

Then Ana broke the audience up into pairs. Each person received a document in print or accessed it online in a Google Doc. Each document provided information about one side of a negotiation between an author and a member of a journal's editorial board. One person in the pair played the author, and the other portrayed the member of the journal's editorial board. The participants spent approximately 20 minutes negotiating and then reported out to the group. Most of the pairs reached an agreement that they felt was a win-win.

Discussion during Ana's presentation and after the exercise allowed participants to ask questions and share experiences.

Publisher indemnification language received plenty of attention. Publishers include indemnification clauses in their agreements (even the Association of College and Research Libraries [ACRL]), and authors should ask if they can be removed, although publishers generally refuse to remove them. One librarian pointed out that indemnification language in database licenses can be removed since the state does not allow them. Authors do not have that kind of backing. Others pointed out that some publishers have "backup" language that can be a bit friendlier to authors. A participant asked if examples of authors being held for indemnification could be provided.

Ana did not know of one. She pointed out that the University of Michigan Press agreement includes indemnification language, even though they are competing with other presses and working hard on being author friendly. Publishers and authors will both want to avoid litigation, and the university (i.e., the publisher or the publisher's parent institution/organization), will also want to be involved in spelling out the guidelines. However, for faculty members with limited assets, litigation is a remote possibility.

Ana pointed out that some publishers include language asking an author to verify that no third party content is used in the article. This can vary by discipline and may be less frequent in humanities journal agreements, where third party images are important. Authors should ask to modify these types of statements to explain that third party content is used with permission or within the confines of fair use. Otherwise, even using a cited quote may violate the terms of a contract.

At different points in the discussion, the audience members were reminded of the large body of resources available to help them and faculty members in these negotiations. In addition to the tools mentioned earlier, suggestions included the following:

- Pull wording the author likes from other publishers' agreements and use it as a good example.
- Use requirements from the funder to back your points.
- Mine those addenda for good language, even if the entire addendum is not used.

Ana (and others) constantly reminded the audience not to give legal advice to faculty authors. Librarians must remain information providers and authors should be allowed to make decisions. Online submissions with click-through agreements that require authors to agree to the publishing agreement at the point of submission make having this conversation even harder. Tenure requirements, workload, and an author's unfamiliarity with

the rights they are signing away make intervention more difficult. Trying to find a person at the publisher who can share the agreement with the author ahead of time is another barrier to the negotiation process. Even though copyright agreements have changed in the past decade, they still favor publishers in most cases.

Ana acknowledged that she has received favorable feedback for this workshop. Authors are generally grateful for this information and the chance to think things through with others. The workshop provides authors a space to consider what is required by funders and institutional policy. They are also able to think about what they and their colleagues need for research and teaching in their discipline. Some rights they might be interested in involve posting preprints, articles as part of a stapled dissertation, conference presentations, and teaching use. Ana deferred one conversation for further discussion until after the session; it centered on how the University of Michigan treats faculty articles as works for hire.

Ana finished with a discussion about the workshop itself. Several participants expressed eagerness for offering similar programs at their home institutions. Ana explained that her materials are licensed under a CC-BY 4.0 license and that she wants them to be used. She noted that she would be available for further questions after the meeting. The audience thanked her with a round of applause and broke for lunch.