Marriage is Easy - Divorce is Tough

What makes a good collaborative relationship, and what doesn’t.

Jason Lye Ph.D.

Lyco Works Incorporated

November 5th 2014
Jason Lye Ph.D.
President and Chief Technical Officer
Lyco Works Incorporated

Experience

Chief Technical Officer
Heat Technologies Inc.

Technology Transfer
Kimberly-Clark / Newell Rubbermaid

Research & Development
ICI, Accordis Fibers, Kimberly-Clark

Intellectual Asset Management
Kimberly-Clark / Newell Rubbermaid

Innovation
19 US patents issued

Degrees & Licenses

Ph.D. Fiber & Polymer Science
NCSU

BSc. (Hons.) Colour Chemistry
Leeds, UK

Chartered Colourist
SDC (Bradford, UK)
The Value of Diverse Perspectives
A need to leverage external resources...

“We can’t solve problems by using the same kind of thinking we used when we created them!”
Phases to Solving a Problem Externally

Roughly Three Phases:

- Identification of the Problem
- Problem Definition

- Search Criteria
- Technology Search

- Pre-Agreement
- Agreement
- Post Agreement
Phases of a Cooperative Engagement

- Opening Discussions
- Pre-Agreement
- Agreement Drafting
- Signature
- Life under the Agreement
Phases of a Cooperative Engagement

One Definition of Happiness:
“The difference between expectations and reality.”

Expectation Setting
Tacit or implicit promises made early on impact the future satisfaction of the parties.

Opening Discussions
Pre-Agreement
Agreement Drafting
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People Make Agreements: Biases and Disconnects

Harvard Law School Program on Negotiation

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<th>Stakeholder</th>
<th>Biases</th>
<th>Disconnects</th>
<th>Resolution</th>
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Early Conversations
Chris Argyris’ “Ladder of Inference”

We take actions based upon our beliefs

- We Select data from what we observe
- We Add Meaning to the Data
- We Make Assumptions based upon the added meaning.
- We Draw Conclusions
- We Adopt Beliefs

Reflexive Loop
We select future data based upon what we believe.

Pool of Observable Data

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Early Conversations
Chris Argyris’ “Ladder of Inference”

Pool of Observable Data

We Select data from what we observe

We Add Meaning to the Data
We Make Assumptions based upon the added meaning.

We Draw Conclusions

We Adopt Beliefs

Can’t count on Sally - she’s insolent and unreliable.

Sally is always late and disrespectful.

Sally deliberately came late to show disrespect.

Sally knew very well when the meeting was to begin.

Sally showed up to the meeting late, and did not explain or apologize.

Reflexive Loop
We select future data based upon what we believe.

We discount, isolate, or fire Sally.
We begin to look for alternate partners.

- **We Select data from what we observe**
- **We Add Meaning to the Data**
- **We Make Assumptions based upon the added meaning.**
- **We Draw Conclusions**
- **We Adopt Beliefs**

**Reflexive Loop**
We select future data based upon what we believe.

- Maybe I should get on with a different project, with a different partner.
- They are going to be really tough to work with.
- They are not really interested in my explanation.
- It’s obvious that I haven’t finished my explanation, yet they interrupt me.
- These folks in my office don’t let me finish a sentence - they interrupt me continuously...
- This other one over here keeps looking at his smartphone…
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<th>Technical Interests</th>
<th>Action</th>
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People Build Relationships - Need Trust to Cooperate Effectively

- What makes humans trust one another?
- How is trust built over time?
- What destroys trust, and can it be recovered?
Four Cornerstones of Trust:

Demonstrated Expertise

Reliability

Authenticity

Goodwill
Four Cornerstones of Trust:
Harvard Law School Program on Negotiation

• Demonstrated Expertise
  Documented experience
  Past Success
  Qualifications

• Authenticity
  Genuine
  Forthright

• Reliability
  Keeping both explicit and tacit promises.
  Doing exactly what you say you will do consistently.

• Goodwill
  Do you have good intentions?
  Do you have the best interests of everyone at heart?
Four Cornerstones of Trust:
Harvard Law School Program on Negotiation

**Behavioral Based**

- Demonstrated Expertise
  - Documented experience
  - Past Success
  - Qualifications

- Reliability
  - Keeping both explicit and tacit promises.
  - Doing **exactly** what you say you will do consistently.

**Character Based**

- Authenticity
  - Genuine
  - Forthright

- Goodwill
  - Do you have good intentions?
  - Do you have the best interests of everyone at heart?
Four Cornerstones of Trust:
Harvard Law School Program on Negotiation

- **Demonstrated Expertise**
  - Documented experience
  - Past Success
  - Qualifications

- **Authenticity**
  - Genuine
  - Forthright

- **Reliability**
  - Keeping both explicit and tacit promises.
  - Doing *exactly* what you say you will do consistently.

- **Goodwill**
  - Do you have good intentions?
  - Do you have the best interests of everyone at heart?

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Four Cornerstones of Trust:
Harvard Law School Program on Negotiation

- **Demonstrated Expertise**
  - Documented experience
  - Past Success
  - Qualifications
  - Uses technical words inappropriately

- **Authenticity**
  - Genuine
  - Forthright
  - Forthright about patent filings…
  - Praises ideas, but does not act
  - Forgot to mention important information
  - Dismisses expressed concerns

- **Reliability**
  - Keeping both explicit and tacit promises.
  - Doing **exactly** what you say you will do consistently.
  - Uses weasel words
  - Mentioned that data would be delivered - and it was.

- **Goodwill**
  - Do you have good intentions?
  - Do you have the best interests of everyone at heart?
• A technology startup needed engineering work done.
• But, go to market strategy also needed an agreement with a telecom giant
• “Engineers will make money on the back end with the sales through the telecom giant.”

• After meeting with the telecom giant:
• “Oh, the Champagne is chilling in the ice bucket as we speak!”

• But… where was the agreement…?
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Expectation Setting
Tacit or implicit promises made early on impact the future satisfaction of the parties.
• Spirit of an LOI is to:
  • show commitment to future business arrangement
  • facilitate due diligence information flow

• Sometimes we execute an LOI early on because we believe that it is the only way that we can get additional information needed to build a business case.

• However, sometimes an LOI can be restrictive, and can interfere with a parties ability to obtain independent information.

• Confidentiality Agreements - conditional upon party culture.
Case # 2: Jumping the Gun
Don’t run to the chapel right away...

- A university spin-out company had developed some Trade Secret formulation technology, and wanted to cooperate with a larger company for commercial presence.
- Seeing dollar signs, they both rushed to execute an LOI.
- But, there were many disconnects:
  - The small company assumptions re: ability of the large company to reduce costs in their process was not valid.
  - The large company had hindered their own ability to obtain independent market information because of the LOI.
  - To make matters worse, during an initial dinner meeting, general market size, market penetration, internal new product margin threshold, had been casually discussed.
Due Diligence
Trust, but Verify.

**Technical**
- Initial Data
- Track record solving similar problems
- Track record commercialization success

**Legal**
- Technology free and clear?
- Shelter-ability
- Pre-existing non-compete agreements?

**Business**
- Does anybody care enough to pay?
- Path to market
- Marketing
- Business model
Case # 3: Due Diligence
Trust but Verify - Case of The License Grant Written by Committee

• A startup company had licensed some small molecule technology from a university and approached a larger company for commercialization and path to market.

• The technology had also been licensed to another startup company to make pharmaceuticals:

• “Yes, we have everything except human pharmaceuticals.”

Agreement writing by committee:

• Diligence showed that because of the unclear license grant language, the technology had accidentally been double licensed in certain fields.

• Took more than 24 months for the three entities to sort it all out.
Agreement Clarity - Remember Disconnects and Biases

- First, figure out what the agreement needs to say, then call the attorney.

- Agreements should be crystal clear.
  - If you have to ask your attorney what something means, then you should send it back and ask them to please re-phrase it.

- Frequently ask your counterparts how they read the draft agreement, and listen very carefully to see if there is a disconnect.
- Don’t assume that they have actually read the agreement!
Dealing with Uncertainty

- "If’s” and “Thens” - even a flow diagram - or decision tree - are all acceptable for inclusion in an agreement if there are important decision events that are yet unknown.
  - Evaluation Options
  - IPO and investment events

- Alternatively, the two parties may simply agree that they will discuss it in good faith and modify the agreement if or when a certain situation arises.
  - The technology looks promising or not.

- Don’t try to boil an ocean - simple agreements work best.
Important Questions and Terms

- Good agreements should be almost self-governing.
- Include example reports in the templates.
- Basis of royalty?
  - Net Sales
  - Profit [crossed out]
  - Lump sum per market or channel or territory
- How will we know that we are both complying with the agreement?
  - Audit and Compliance Assurance Clauses
  - How often will we meet to review how everything is going?
- What happens when we go our separate ways?
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• Any fool can write a bad Joint Devel. / Cooperative Agreement.

• A good Joint Development Agreement anticipates:
  • what can go wrong - process for resolution?
  • what to do when things go surprisingly well?
  • under what circumstances the parties go their separate ways?
  • what happens to the R&D if the parties separate?
  • financial clarity - who will pay for what?
  • survival of terms
  • Intellectual property rights

• And… is very clearly written.
Yes, but what about the kids?
*What happens if or when we want to go our separate ways?*

**Resultant Technology**
- How do we agree what was developed during the agreement, and what’s new / independent?

**Publications**
- When?
- What?
- Review Process?

**Intellectual Property Surviving Terms**
- Confidentiality
- First refusals/
- Maintenance
Agreement Compliance: Bad deal language and Auditing

- Margaret “Peggy” A. Moisel
  - President, IP Financial Management LLC

- “When I go into a company, I check all license agreements, and check in with all licensees to see if they are in compliance. 99% of the time, they are not.”
  - Administered by a clerk who has NOT read the agreement
  - Don’t have a good tracking system
  - Poor language
  - Neglected amendments
Common Hot Buttons

- External Communications
- Problem Resolution Pathways
- Report Generation
- Meeting Schedules
- Exit Strategies / Conditions
- Amendment / Renegotiation Clause
“Happiness” under the agreement may depend upon inferences and expectations set very early on in the discussion...

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Conclusions

• Prepare for discussions carefully beforehand:
  • Identify what’s most important to you, and what you think might be of most importance to your counterpart.
  • Avoid accidentally raising unfounded expectations

• Ask questions to ensure mutual understanding; find those hidden assumptions, biases, and disconnects.

• Ensure clarity;
  • avoid accidentally raising unfounded expectations
  • Keep an open mind