CHAPTER
20

Profit, Power and Persuasion Together: Digital Negotiation and Practice

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Introduction

This book has argued that every business negotiation is a contest over **profit**, the value parties create and divide; that it is decided by **power**, which comes from alternatives, markets, institutions and analytical tools; and that it is closed by **persuasion**, through communication, culture and ethics. Parts II, III and IV examined each pillar in turn. Real negotiations, however, do not arrive divided into chapters. A negotiator facing a difficult deal must analyse its economics, its balance of power and its human dimension at the same time, and decide how to act on all three.

This final chapter brings the three pillars together. It proceeds in four steps. Section 20.1 sets out a method for analysing a complete negotiation through the three pillars and applies it to the Deal File. Section 20.2 examines what changes when machines take part in negotiation, from automated procurement to AI-assisted preparation and negotiations between software agents, and the questions this raises about information, accountability and trust. Section 20.3 presents five classroom simulations built from cases in the book. Section 20.4 asks which skills negotiators will need in an economy shaped by geopolitical fragmentation, technological change and new expectations of responsibility.

The Deal File is itself about technology. Since 2023 news publishers, authors and other owners of content have faced a choice in their dealings with the developers of artificial intelligence: license their content in exchange for payment, or sue for infringement of copyright. Some have done one, some the other and some both. The choice illustrates every theme of this book: the creation and division of value from a new technology, the role of alternatives and of courts in

determining bargaining power, and the importance of persuasion, coalitions and legitimacy in a contest that is being fought in public as well as at the table.

DEAL FILE

Publishers and AI Firms: License or Sue?

The large language models that power AI assistants are trained on vast quantities of text, including news articles and books. From 2023 onwards the owners of that content asked whether, and on what terms, it could be used without their permission. AI developers argued that training models on publicly available text was a lawful, transformative use; many publishers and authors called it copying on an industrial scale, threatening their businesses. Each side had alternatives to agreement, and each faced uncertainty about what the courts would decide.

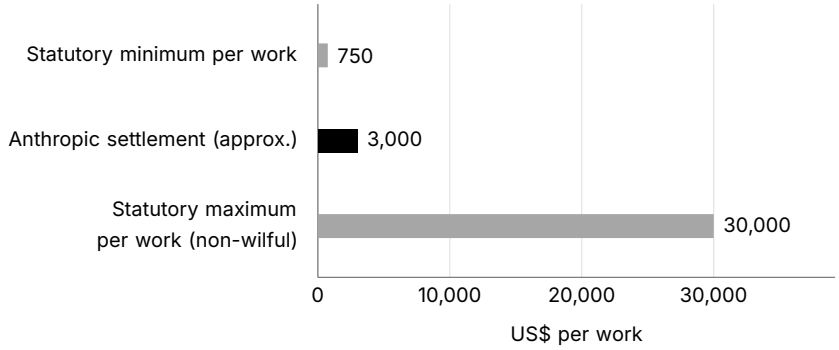
The licensing route. Several publishers and platforms chose to negotiate. In February 2024 Google gained access to Reddit's Data API under an expanded partnership that allowed it to display, train on and otherwise use Reddit content (Google, 2024). In May 2024 News Corp, owner of *The Wall Street Journal*, *The Times* and other titles, signed a multi-year agreement giving OpenAI access to current and archived content from its news publications, for display in answers to users' questions and to improve OpenAI's products (OpenAI, 2024a). In neither case did the companies disclose the financial terms, which is itself a feature of such negotiations: the absence of public prices makes each new deal harder to benchmark.

The litigation route. Other owners of content chose to sue. On 27 December 2023 *The New York Times* sued OpenAI and Microsoft, alleging that millions of its articles had been used without permission to train models now competing with it. On 26 March 2025 Judge Sidney Stein allowed its main claims of direct and contributory copyright infringement to proceed (*The New York Times Co. v. Microsoft Corp.*, 2025). In April 2025 the Judicial Panel on Multidistrict Litigation centralised the copyright cases against OpenAI, including those of the *Times*, other news organisations and groups of authors, before the same judge in New York (*In re OpenAI, Inc., Copyright Infringement Litigation*, 2025).

A settlement that set a benchmark. Authors brought a class action against Anthropic, the developer of the Claude models. In June 2025 Judge William Alsup ruled that training AI models on lawfully acquired books could be fair use, but that downloading and storing books from pirate websites was not protected, leaving that claim to go to trial (*Bartz v. Anthropic* PBC, 2025a). The parties settled instead, and on 17 October 2025 the court granted preliminary approval to the class settlement. The 482,460 works finally identified would each receive an award of about US$3,000, less costs and fees, which the court described as four times the statutory minimum for ordinary infringement, and a fairness hearing

Figure 20.1

Damages per work: the Anthropic settlement and statutory damages under US copyright law (US$)



Note. Author, based on *Bartz v. Anthropic PBC* (2025b) and 17 U.S.C. § 504(c). Statutory damages range from US$750 to US$30,000 per work and may be raised to US$150,000 for wilful infringement; the maximum for wilful infringement is not shown.

was set for April 2026 (*Bartz v. Anthropic* PBC, 2025b). Figure 20.1 compares the settlement with the range of statutory damages.

Regulation. Governments also shaped the negotiation. In the European Union, obligations under the AI Act for providers of general-purpose AI models took effect on 2 August 2025. Providers must put in place a policy to comply with EU copyright law, including the reservations of rights that rights holders use to opt their content out of text and data mining, and must publish a sufficiently detailed summary of the content used for training, according to a template provided by the AI Office (Regulation (EU) 2024/1689, 2024). In the United States, the outcome depended largely on the courts' interpretation of fair use.

Questions to keep in mind. How should a publisher decide between licensing and litigation? What determines the price of a licence? How do court rulings in other cases change the bargaining power of each side? Why have some publishers chosen to do both? And what does the contest suggest about negotiation when the law is uncertain and the technology is changing quickly? The chapter answers these questions using the three pillars of the book. Readers should note that Anthropic, one of the parties discussed, is also the developer of an AI system; the facts here are drawn from court records and published reports.

Table 20.1

Publishers and AI firms at a glance

Parties	News publishers, book authors and other rights holders; AI developers including OpenAI, Microsoft, Google and Anthropic; courts; regulators in the United States and the European Union; readers and users of AI services
At stake	Payment for the use of content in training and in AI products; control over how content is used and attributed; the business model of journalism and publishing; the cost and legal certainty of AI development
Timeline	*New York Times* lawsuit filed 27 December 2023; Reddit–Google deal February 2024; News Corp–OpenAI deal May 2024; claims in the *Times* case allowed to proceed March 2025; fair-use ruling in the Anthropic case June 2025; EU general-purpose AI obligations from 2 August 2025; Anthropic settlement preliminarily approved 17 October 2025
Main options	License content for payment and attribution; sue for infringement; combine both; block access through technical opt-outs

Note. Author, based on the sources cited in the Deal File.

20.1 Analysing a Full Negotiation through the Three Pillars

A Method

The chapters of this book offer many tools. To analyse a complete negotiation, they can be organised into a sequence of questions under each pillar. Table 20.2 sets out the method.

The order matters. Negotiators who begin with tactics, before they have understood the value at stake and the balance of alternatives, tend to fight over the wrong things. Negotiators who analyse profit and power but neglect persuasion may design an economically sound agreement which is nonetheless rejected, as several Deal Files in this book have shown. The method asks negotiators to work through all three before choosing a strategy, and to return to them as the negotiation unfolds.

Profit: The Value of Content

The first question is what value is at stake. For AI developers, high-quality, reliable and current text has value both for training models and for products that answer questions about current events. For publishers, the same content is the basis of their business; it has value in licensing income and, more importantly, in the readers and subscribers it attracts. Licensing creates value when the AI developer gains legal certainty and access to content it needs, and the publisher gains income, attribution and links that bring readers back, more than it loses from readers who obtain answers without visiting its site.

Table 20.2

Integrated analysis of a negotiation through the three pillars

Pillar	Key questions	Tools from the book
Profit	What value is at stake, and for whom? How can it be enlarged? How will it be divided? What are the parties' interests, targets and limits?	Surplus and the zone of possible agreement (Chapters 2 and 11); planning template (Chapter 7); integrative bargaining and logrolling (Chapter 8); deal structures and earn-outs (Chapter 9)
Power	What are each side's alternatives? Who depends on whom? What role do time, information, coalitions, institutions and third parties play?	BATNA and dependence (Chapter 11); game theory and decision trees (Chapter 12); coalitions and pivotal parties (Chapter 14); third parties and courts (Chapter 5); states and geopolitics (Chapter 15)
Persuasion	How will the parties communicate? How do framing, emotions and trust affect perceptions? What cultural and ethical considerations apply? Who must be persuaded beyond the table?	Communication and bias (Chapter 16); styles and tactics (Chapter 17); culture (Chapter 18); ethics and reputation (Chapter 19); two-level games (Chapter 4)
Synthesis	Given all three, what strategy should each side adopt? What process will get there? What would a durable agreement look like?	Phases and tools (Chapter 13); conflict styles (Chapter 3); implementation (Chapter 13)

The terms of the reported agreements show how parties have tried to enlarge and divide this value. Licences often combine an annual payment with access to archives, the right to display excerpts with attribution and links, and sometimes cooperation on products. These are the multi-issue packages described in Chapter 8: a publisher valuing attribution and traffic and an AI developer valuing legal certainty and current content can trade across issues.

Power: Alternatives Shaped by Courts

The second question is what determines each side's power. The publisher's alternative to a licence is to sue, to block access through technical opt-outs or to do nothing. The AI developer's alternative is to rely on a fair-use defence, to use other content, including licensed material from other publishers, or to generate synthetic data. The value of each alternative depends on uncertain court rulings, which is why litigation and negotiation are so closely connected.

A simple decision tree, of the kind introduced in Chapter 12, shows the logic. Suppose a publisher believes that, if it sues, it has a 40 per cent chance of winning damages and a licence on favourable terms worth US$300 million in present

value, and a 60 per cent chance of losing, in which case it receives nothing. Litigation would cost US$30 million. The expected value of suing is 0.4 × US$300 million − US$30 million = US$90 million. If an AI developer offers a licence worth US$100 million in present value, a risk-neutral publisher should accept; if it offers US$60 million, the publisher should prefer to sue. The developer makes the same calculation from its side, and the zone of possible agreement lies between the publisher's expected value of litigation and the developer's expected cost of being sued. Table 20.3 shows how court rulings can shift this range.

Table 20.3

How rulings shift the bargaining range: an illustrative example (present values, US$ million)

Scenario	Publisher's expected value of suing	Developer's expected cost of being sued	Zone of possible agreement
Before any ruling: probability of publisher winning 40 per cent	90	170	90 to 170
After a ruling that training is fair use: probability falls to 15 per cent	15	95	15 to 95
After a ruling that copying from pirate sites is not protected: probability of liability for such copies rises to 80 per cent	210	290	210 to 290

Note. Author's illustrative example, assuming an award worth US$300 million if the publisher wins. The developer's expected cost is the expected award plus its own legal costs of US$30 million and a reputational cost of US$20 million; the publisher's expected value is the expected award less its legal costs of US$30 million.

The example shows why the Anthropic ruling of June 2025 mattered so much. By holding that training on lawfully acquired books could be fair use, it weakened the authors' position on that claim; by holding that copying from pirate sites was not protected, it strengthened their position on the other, and exposed the developer to potentially very large statutory damages. The settlement followed within weeks, at a level that, at roughly US$3,000 per work, reflected the strength of the authors' remaining claim. Each new ruling in any of the many related cases changes the alternatives of all the parties, and so the price of licences negotiated elsewhere.

Power also depends on coalitions and on the pivotal position described in Chapter 14. A single small publisher has little power, because its content is replaceable. A large publisher with unique, current and trusted content, such as a leading national newspaper, has more. Collective action by publishers, through

industry bodies or collective licensing schemes, can increase their power, though it may raise questions under competition law.

Persuasion: Legitimacy, Framing and Trust

The third question is how agreement will be reached and accepted. Both sides have fought a public contest of framing. Publishers frame the issue as one of fairness and the survival of independent journalism; AI developers frame it as one of innovation, access to knowledge and the lawful use of public information. The framing matters because courts, legislators and the public will decide the rules within which future negotiations take place, as the two-level game of Chapter 4 predicts. Trust also matters. Publishers need confidence that licensed content will be used as agreed and attributed accurately; developers need confidence that a licence will protect them from future claims. Transparency obligations, such as those in the EU AI Act, can support trust by making the use of content visible.

Synthesis: Why Some Publishers Do Both

The analysis explains why some publishers have chosen both routes. Licensing to one developer creates income and establishes a market price, strengthening the argument, in litigation against another, that the use of content has a value for which payment is due. Litigation against one developer, in turn, strengthens the publisher's alternative in negotiations with others, since a credible threat of suit raises the developer's expected cost of proceeding without a licence. The two routes are complementary strategies within a single negotiation with an industry, not mutually exclusive choices.

KEY MOVE

Before you choose a tactic, work through all three pillars: the value at stake and how it can be enlarged, each side's alternatives and what could change them, and what will make an agreement acceptable to those who must approve it. Revisit the analysis whenever a court, a regulator or a competitor changes the alternatives.

20.2 What Changes When Machines Negotiate?

From Tools to Agents

Digital technology has long supported negotiation through email, video conferencing, databases and electronic auctions. Artificial intelligence adds three new possibilities. First, AI can **support human negotiators**: summarising documents, analysing past deals, generating options, drafting proposals and simulating the other side for practice. Second, AI can **negotiate on behalf of a party** within limits set by humans, as in the automated negotiation of supplier contracts described in Chapter 7, where Walmart used software to negotiate terms with large numbers of smaller suppliers. Third, AI agents may increasingly **negotiate with other AI agents**, for example in procurement, advertising markets or the scheduling of logistics, with humans setting goals and limits but not taking part in each exchange. Table 20.4 summarises these roles of AI in negotiation.

Table 20.4

Roles of AI in negotiation

Role	Examples	Benefits	Risks
Preparation assistant	Research, analysis of counterparts, scenario modelling, scoring systems	Speed; broader analysis; better preparation	Errors and fabricated facts; over-reliance; confidentiality
Practice partner	Simulated counterparts for training	Low-cost rehearsal; feedback	Unrealistic behaviour; narrow scenarios
Drafting and communication	Proposals, summaries, translation	Clarity; speed; overcoming language barriers	Loss of nuance; tone errors; cultural misreading
Autonomous negotiator	Negotiating routine contracts within set limits	Scale; consistency; lower transaction costs	Errors at scale; accountability; manipulation by counterparts
Agent-to-agent negotiation	Machines negotiating with machines	Speed; efficiency in high-volume markets	Collusion; opacity; loss of human judgement

Information and Strategy

AI changes the economics of information described in Chapter 2. Preparation that once took a team weeks can be done in hours, which reduces the advantage of the better-resourced party. At the same time, a party with better data and better models may gain a new advantage, particularly in negotiations with

consumers or small firms. Because AI systems can analyse patterns in a counterpart's past behaviour, they can also estimate reservation prices more accurately, shifting power towards the party using them.

Research has also shown that automated negotiators can learn strategic behaviour, including behaviour humans would regard as deceptive. In an early experiment, researchers who trained dialogue systems to negotiate the division of items found that the systems learned to feign interest in items they did not value in order to concede them later, without having been programmed to do so (Lewis et al., 2017). Research on pricing algorithms has found that algorithms learning by trial and error can, in some market conditions, arrive at prices above competitive levels without explicit communication, raising concerns about tacit collusion (Calvano et al., 2020). These findings suggest that the ethical questions of Chapter 19, about deception and fair dealing, and the competition questions of Chapter 9, apply with new force when machines negotiate.

Accountability and Trust

When an AI system negotiates, who is responsible for what it says and agrees? In most legal systems, a party using an automated system is bound by the agreements it makes and responsible for its representations, as it would be for a human agent. Chapter 2 described the principal–agent problem; AI agents create a version of it in which the agent's incentives are set by its design and training, which the principal may not fully understand. Firms using AI in negotiation therefore need clear limits on what systems may agree, human review of significant commitments, records of exchanges and testing for errors and biases. Regulation is beginning to address these issues. The EU AI Act sets transparency obligations for certain systems, including disclosure when people interact with an AI system, and obligations for providers of general-purpose models.

Trust in AI-assisted negotiation depends on transparency. Counterparts may react differently when they know they are negotiating with a machine; some may regard it as fairer and more consistent, others as impersonal or manipulative. The persuasion pillar suggests that relationships, face and emotions, examined in Chapters 16 and 18, remain important even when machines mediate communication, and the most complex and relationship-intensive negotiations will continue to require human judgement.

What Remains Human

AI is likely to transform routine, high-volume, well-defined negotiations, in which issues are few, preferences are clear and relationships matter little. It is less likely to replace humans in negotiations that are complex, novel, emotionally charged, politically sensitive or dependent on long-term relationships, such

as most of the Deal Files in this book. In those negotiations, AI will be a powerful assistant: preparing analysis, generating options and testing strategies. The decisions about what to value, whom to trust, how to frame an offer and when to walk away will remain human, as will responsibility for them.

KEY MOVE

Use AI to prepare more thoroughly, rehearse more often and draft more clearly, but set clear limits on what any automated system may agree, review its significant commitments and remain accountable for what it says on your behalf.

20.3 Five Simulations from the Book's Cases

How to Use the Simulations

The following simulations allow students to apply the concepts of the book in practice. Each is based on a Deal File and can be run in a seminar of 90 minutes to three hours. Lecturers divide students into teams, give each team the public information from the relevant Deal File and a short confidential brief prepared from the guidance below, allow time for preparation using the planning template of Chapter 7, run the negotiation and then hold a debriefing. Students should not use information unavailable to their role, and lecturers may vary the parameters to create different zones of possible agreement. Table 20.5 outlines five simulations built from the book's cases.

Guidance for Each Simulation

Simulation 1: The writers' contract. Give each side a confidential brief with its priorities among the issues, its reservation point on pay and residuals and its constituency's expectations. The union's brief should emphasise protection against the use of AI and the views of its members; the studios' brief should emphasise flexibility and the costs of a long strike. Introduce a public-relations event midway, such as a press statement, to test how public pressure affects the negotiation. Debriefing questions: Which issues were traded? How did constituencies shape the outcome? What role did the threat of a strike play?

Simulation 2: The partnership review. Give the investor a confidential valuation of the developer and a concern about losing exclusive access; give the developer a need for capital and computing power and a wish for greater independence. Include several issues of different value to each side, so that logrolling is possible. Debriefing questions: How was the surplus divided? Did the teams find trades that created value? How did each side protect itself against hold-up?

Table 20.5

Five simulations built from the book's cases

Simulation	Based on	Parties	Main issues	Concepts practised
1. The writers' contract	Chapter 1: the Hollywood strikes of 2023	Writers' union; studios' association	Pay, residuals from streaming, staffing, use of AI	Interests and positions; collective bargaining; public pressure
2. The partnership review	Chapter 2: Microsoft and OpenAI	A large technology investor; an AI developer	Equity stake, access to models, revenue sharing, exclusivity, governance	Surplus, specific investment, hold-up and value creation
3. Dividing a supplier	Chapter 14: Boeing, Airbus and Spirit AeroSystems	Acquirer; rival customer; target's board; competition authority	Price, sites, compensation, supply commitments, remedies	Multi-party negotiation; coalitions; pivotal parties; linked deals
4. Restarting the mine	Chapter 15: Cobre Panamá	Host government; foreign investor; community representatives	Royalties, state participation, closure date, environment, arbitration	Obsolescing bargain; legitimacy; stakeholders
5. The merger that might be	Chapter 18: Honda and Nissan	Two companies' negotiating teams	Structure, governance, restructuring, brands, timetable	Culture; face; organisational identity; deal design

Simulation 3: Dividing a supplier. Use four teams. Give the acquirer a strong wish to complete quickly, the rival customer a need to secure its supply and a willingness to accept loss-making contracts only with compensation, the target's board a duty to maximise value for shareholders, and the competition authority a mandate to protect competition. Allow coalitions to form and permit side agreements. Debriefing questions: Who was pivotal? Which coalitions formed, and why? How did the authority's conditions shape the outcome?

Simulation 4: Restarting the mine. Give the government a mandate shaped by public opinion and the Supreme Court's ruling, the investor a need to recover its investment and end uncertainty, and the community representatives concerns about water, jobs and environmental protection. Require that any agreement be acceptable to all three. Debriefing questions: How did legitimacy affect the terms? What mechanisms made the agreement durable? How did the arbitration claims affect each side's alternatives?

Simulation 5: The merger that might be. Give each company's team a confidential brief describing its history, identity and internal constraints, and the economic case for combination. Halfway through, give one team an instruction to propose a change of structure that would make the other its subsidiary. Debriefing questions: How did the proposal affect the negotiation? How could the underlying concern have been addressed without threatening face? Would a partnership short of merger have been better?

Debriefing and Assessment

Debriefing is where learning happens. Lecturers can compare outcomes across groups, plot the agreements on a chart of joint value and division, and ask students to explain why outcomes differed. Useful questions include: What was your alternative, and did it change during the negotiation? What did you learn about the other side's interests? Which tactics worked, and which provoked resistance? Did you face any ethical choices? What would you do differently? Assessment can combine the outcome, measured with a scoring system of the kind described in Chapter 13, with a written reflection that applies the concepts of the book.

KEY MOVE

Treat simulations as experiments. Prepare with the planning template, negotiate, then analyse the outcome through the three pillars and compare it with what other groups achieved under the same conditions.

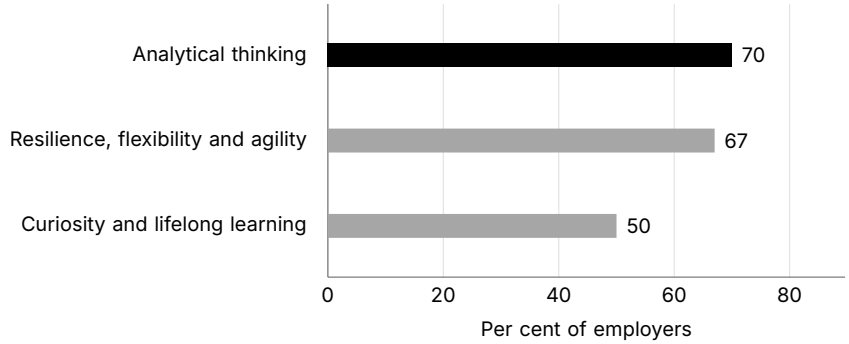
20.4 Which Skills Will Future Negotiators Need?

Three Forces

Three forces are reshaping the environment in which business negotiators work. The first is **geopolitical fragmentation**: tariffs, export controls, sanctions, investment screening and competition between major powers, examined in Chapters 11, 12, 15 and 17, have made governments parties to many commercial negotiations and have made alternatives less stable. The second is **technological change**, above all the spread of AI, which is changing both what is negotiated, as the Deal File shows, and how negotiation is conducted. The third is **new expectations of responsibility**: investors, regulators, employees and the public increasingly judge firms by the environmental and social consequences of their agreements and by the fairness of the processes through which they are reached, as Chapters 15 and 19 showed.

Figure 20.2

Selected skills identified as core by employers, 2025 (per cent of employers)



Note. Author, based on World Economic Forum (2025), chapter 3. The report describes analytical thinking as essential for "seven out of 10" companies; the shares for other skills appear only in the report's chart and are not reproduced here.

Employers' expectations reflect these forces. In the World Economic Forum's survey of employers for its *Future of Jobs Report 2025*, analytical thinking was the skill most often identified as core for the workforce, by seven out of ten employers, followed by resilience, flexibility and agility, cited by 67 per cent, and leadership and social influence. Creative thinking and motivation and self-awareness came next, and curiosity and lifelong learning was cited by 50 per cent of employers, with technological literacy and empathy and active listening also among the top ten (World Economic Forum, 2025). Figure 20.2 shows the shares that the report states in its text.

Almost every skill in Figure 20.2 is a negotiating skill. Analytical thinking is the basis of the profit and power analysis of Parts II and III. Resilience and flexibility are needed to manage uncertainty, deadlock and difficult tactics. Leadership and social influence, empathy and active listening are the core of persuasion in Part IV.

A Skills Framework

Table 20.6 organises the skills that future negotiators will need around the three pillars of the book.

Learning to Negotiate

Negotiation is a skill that improves with deliberate practice and reflection. Research on negotiation training has found that people learn most effectively when they compare cases and draw out the underlying principles, rather than studying a single example (Thompson et al., 2000). This is why each chapter of this book

Table 20.6
Skills for future negotiators

Pillar	Skills	Where developed in this book
Profit	Economic analysis of value; financial modelling of deals; designing multi-issue agreements and contingent contracts	Chapters 2, 6, 7, 8 and 9
Power	Analysing alternatives and dependence; strategic and game-theoretic thinking; managing coalitions; understanding states, law and geopolitics	Chapters 5, 11, 12, 14 and 15
Persuasion	Listening and questioning; framing; managing emotions and trust; cross-cultural competence; ethical judgement	Chapters 16, 17, 18 and 19
Integration	Using AI responsibly; analysing complete negotiations; learning from experience	Chapters 13 and 20

has combined a Deal File with shorter snapshots, and why Section 20.3 asks students to compare outcomes across groups. The author's teaching and research on international business, communication and economic relations between India and Europe reflect the same conviction: negotiators learn best by connecting theory to real cases and by reflecting on how culture and context shape what works (Kumar, 2026a, 2026b). The same conviction underlies the author's forthcoming work on turning evidence into impact in international business and economics (Kumar, 2026g).

KEY MOVE

Build your skills across all three pillars. Practise analysis, strategy and communication deliberately, compare cases to find the principles beneath them, learn to use AI as an assistant rather than a substitute and develop the ethical judgement that makes your agreements last.

BACK TO THE DEAL FILE

Reading the Choice between Licensing and Litigation

The three pillars together explain the choices of publishers and AI developers.

Profit: value can be created by agreement. Licences give developers legal certainty and access to current, reliable content, and give publishers income, attribution and traffic. The multi-issue structure of licences allows both sides to trade across issues they value differently.

Power: courts set the alternatives. The value of litigation to publishers, and its cost to developers, depends on rulings that are still emerging. The Anthropic ruling and settlement show how a single decision can shift the zone of possible agreement and set a benchmark for others. Large publishers with unique content have more power than small ones, and coalitions can increase their leverage.

Persuasion: legitimacy and framing matter. Both sides are seeking to persuade courts, legislators and the public, whose decisions will set the rules for future negotiations. Transparency obligations under the EU AI Act may build trust by making the use of content visible.

Synthesis: licensing and litigation are complementary. Publishers that license to some developers and sue others are using each route to strengthen their position in the other. The contest is not a single negotiation but a series of related ones, in which every agreement and every ruling changes the alternatives of all the parties.

MA EXTENSION

Bargaining in the Shadow of Uncertain Law

Mnookin and Kornhauser (1979) argued that private negotiations take place "in the shadow of the law": parties bargain over outcomes reflecting what a court would decide. When the law itself is uncertain, as in the case of AI and copyright, each ruling changes the shadow. (a) Extend the decision tree of Section 20.1 to a setting with many publishers and one developer, in which a ruling in one case changes the probability of success in all others. (b) Show why early settlements may be cheaper for the developer and why some publishers may prefer to wait for rulings in other cases. (c) Explain how a large settlement, such as that in the Anthropic case, creates a benchmark affecting later negotiations. (d) Discuss whether collective licensing by publishers would increase total welfare, and what concerns it might raise under competition law.

ETHICS CHECK

AI developers argue that training models on publicly available text is a lawful use, benefiting society through access to knowledge; publishers and authors argue that it takes the value of their work without consent or payment. Is it ethical to use content for training without permission while the law is uncertain? Should AI developers pay for content even where the law might not require it? And what responsibilities do firms have when they deploy AI agents to negotiate with people who may not know that they are dealing with a machine?

Pillar Scorecard

Table 20.7

Pillar Scorecard: publishers and AI firms, 2023 to 2026

Pillar	Importance in this case	Evidence
Profit	Very high	Licensing agreements with major publishers and platforms and a settlement award of about US$3,000 for each of 482,460 books show the value of content to AI development
Power	Very high	Court rulings, coalitions of rights holders and regulation determine each side's alternatives
Persuasion	High	Both sides are seeking to persuade courts, legislators and the public, whose decisions will set the rules for future negotiations

Your Move

This is a constructed teaching case.

You are the head of strategy at a Polish media group that publishes a national daily newspaper, several regional titles and a large archive of articles dating back to the 1990s. An international AI developer has offered your group a three-year licence to use its archive and current articles in training and in its AI assistant, in exchange for an annual payment and attribution with links to your websites. Another AI developer appears to have used your content without permission. Your editors are divided: some fear that AI assistants will reduce visits to your websites; others see licensing income as essential for the future of the newsroom.

1. Using Table 20.2, analyse the negotiation through the three pillars.
2. Estimate the value of your content to the developer and to your group, and identify issues other than price that could be traded.
3. Build a simple decision tree comparing licensing with legal action against the second developer, using the approach of Section 20.1.
4. How would rights under EU law, including the AI Act and the reservation of rights against text and data mining, affect your alternatives?
5. Would you join other European publishers in negotiating collectively? What are the advantages and risks?

Conclusion

This book began with conflict: the disagreements over value, power and fairness that arise wherever firms, workers, governments and communities depend on each other. It has argued that negotiation is the principal means by which economic actors turn such conflict into agreement, and every negotiation can be understood through three pillars. **Profit** asks what value is at stake and how it can be created and divided. **Power** asks what each side's alternatives are and how they can be changed. **Persuasion** asks how agreement is reached and made to last, through communication, culture and ethics. The Deal Files of this book, from the Hollywood strikes and the Microsoft–OpenAI partnership to the Busan trade truce, the division of Spirit AeroSystems, the Cobre Panamá mine and the negotiations between publishers and AI firms, show these pillars at work in some of the most important business negotiations of recent years.

Three lessons stand out. First, value is rarely fixed: the best negotiators enlarge the pie before they divide it, by understanding interests, trading across issues and designing agreements which work in practice. Second, power is relational and changeable: it comes from alternatives which can be improved, from coalitions which can be built and from institutions, courts and states able to shift the balance at any moment. Third, persuasion is indispensable: agreements economically sound and backed by power can still fail if they are perceived as unfair, threaten the other side's identity or rest on deception. The negotiators who will succeed in an economy shaped by geopolitical fragmentation, technological change and new expectations of responsibility are those who can analyse all three pillars together, act ethically and learn from every negotiation they undertake.

Exercises

A. Objective Questions

1. In the integrated method of Table 20.2, the first pillar to analyse is:
   a) persuasion
   b) profit
   c) power
   d) tactics

2. In the illustrative decision tree of Section 20.1, the publisher's expected value of suing is:
   a) US$30 million
   b) US$90 million
   c) US$120 million
   d) US$300 million

3. In June 2025, in the case brought by authors against Anthropic, the court held that:
   a) all uses of books for training were infringing
   b) the case should be dismissed
   c) training on lawfully acquired books could be fair use, but copying from pirate sites was not protected
   d) AI developers must license all content

4. Under the settlement in the Anthropic case, the award for each work was about:
   a) US$750
   b) US$1,500
   c) US$3,000
   d) US$30,000

5. Obligations under the EU AI Act for providers of general-purpose AI models took effect on:
   a) 1 January 2025
   b) 2 August 2025
   c) 1 January 2026
   d) 2 August 2027

6. Research on pricing algorithms by Calvano et al. (2020) raised concerns about:
   a) deception by consumers
   b) labour shortages
   c) lower prices
   d) tacit collusion

7. In the World Economic Forum's survey for 2025, the skill most often identified as core by employers was:
   a) analytical thinking
   b) technological literacy
   c) talent management
   d) creative thinking

8. Thompson et al. (2000) found that negotiators learn most effectively by:
   a) comparing cases to draw out principles
   b) studying a single case in depth
   c) memorising tactics
   d) negotiating without preparation

B. Short-Answer Questions

1. Explain the method of integrated analysis in Table 20.2 and why the order of the pillars matters.

2. Using Table 20.3, explain how court rulings shift the zone of possible agreement between publishers and AI developers.

3. Why might a publisher both license its content to one developer and sue another?

4. Describe three roles that AI can play in negotiation, with the benefits and risks of each.
5. Who is accountable when an AI system negotiates on behalf of a firm? What safeguards should firms adopt?
6. How should a lecturer run and debrief one of the simulations in Section 20.3?
7. Explain how the skills in Figure 20.2 relate to the three pillars of the book.

C. Long-Answer Questions

1. Analyse the choices of publishers and AI developers between licensing and litigation through the three pillars of profit, power and persuasion.
2. "In the age of AI, the human negotiator becomes more important, not less." Discuss.
3. Choose one Deal File from this book and analyse it fully using the integrated method of Table 20.2. What strategy would you have recommended to each party?
4. What skills will business negotiators need over the next decade, and how should universities and firms develop them?

Further Reading

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