

Project Business is not for the Faint of Heart

Oliver F. Lehmann¹

“Don’t be afraid; go straight in, for the bolder a man is, the more likely he is to carry his point, even though he is a stranger.” – Homer



Summary

Often, Project Business suffers from insufficient clarification of rules that are applicable to the parties involved. It takes courage to address issues early before they grow larger, becoming problems or even crises. In order to create this understanding, instances that are involved with project management should also address matters of Project Business.

¹ Information about the author [at the end of the article](#).

A Copyright Conflict in Project Business

The Situation

A customer from Switzerland in a project under contract, let's call the company Teabag AG², had a German company Black Coffee GmbH assigned to work on a project as a contractor. The contract's content was the development of extensive courseware, including text, graphics, photos, videos, other digital content, a multiple-choice exam, and a lot more. To keep things simple, the work was done based on a short written agreement and mostly on verbal arrangements. Both parties agreed not to invest time, energy, and money in developing a detailed contract. Instead, Teabag AG wanted to see quick results, and Black Coffee GmbH wanted to send invoices without much delay. So, the project agreement was more based on mutual trust than on a written and signed contract document.

Black Coffee GmbH, in turn, used several subcontractors: A service provider, a vendor of off-the-shelf components, and three freelancers coming from various European countries. The freelancers, in essence, were one-person subcontractors.

Figure 1 shows the 2-tier project supply network that emerged. As simple as the network was, it already had seven parties involved and six interfaces between them based on verbal and short written agreements.

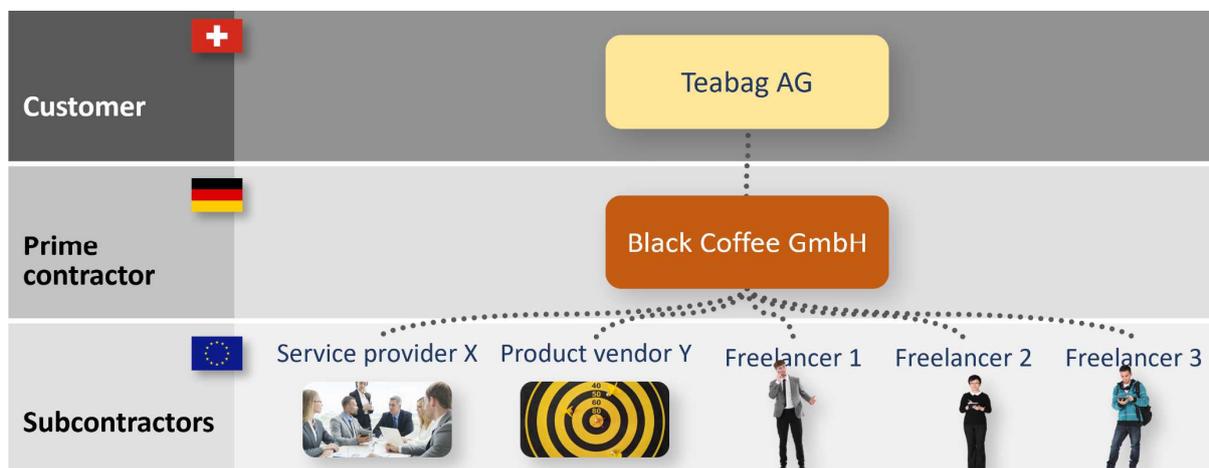


Figure 1: The small Project Supply Network at Teabag AG's Project

Soon disputes turned up. Differences in laws relating to intellectual property in the different countries caused some heated discussions. The work results of the project were, to a significant part, products of intellectual and creative work, and the handling of copyright questions was to some degree different across the national jurisdictions.

² All names are anonymized.

- In Switzerland, copyright is owned by the creative individual, a natural person, who is free to use it as the person likes. Transfer of copyright is accepted.³
- In Germany, copyright is also owned by the creative individual or a group of people; however, it cannot be transferred. The copyright owner or owners can transfer the right to use and take advantage of the copyright to a third party but not the copyright itself.⁴
- Generally, in most European countries, copyright is referred to as “Author’s right” (French: “Droit d’auteur”, German: “Urheberrecht”, Italian: “Diritto d’autore”); its focus is more on the rights of the creative person(s) than on the works created and their business value.
- Another role played the “Berne convention”. It internationalizes copyright, stating that a signatory country must grant citizens from other signatory countries the same copyright protection it grants its own citizens. All parties involved in the example came from signatory countries of the Berne Convention.⁵

In a project which includes digital work results, including photographic and graphic artwork, texts, software logic, and more products of human minds, the question may come up naturally at one point: Who owns that?

And some more questions, such as:

- To what extent may the work results be used by a customer?
- The contractors have no business relationship with the final customer. Does the transfer of usage rights of the work results to the prime contractor include the transfer to the final customer?
- When several subcontractors work together, what are their roles?
- Which country’s laws should be applied?
- Where should be the place of court for the worst case – litigation?
- How are the creative parties remunerated not only for their work but also for transferring copyright and usage rights?

In a project with well-developed contracts, there should be clauses clarifying that under consideration of the interests of all parties and the limitations established by the applicable jurisdiction.

In the case above, no such contracts existed. There were some short written agreements, but their focus was on payment and delivery terms, not on matters of copyright.

³ (The Federal Assembly of the Swiss Confederation, 2022)

⁴ (Federal Ministry of Justice, 2021)

⁵ (Berne Convention, 1984)

The Solution of Immediate Problems

From time to time, I get called by organizations to do “Healing Days” for Project Business. In these events, project customers and contractors come together for a one-day workshop to talk about troubles between them and find solutions⁶. These events have two parts, first participants bring up their complaints about the other parties. Then in the second part of the workshop, the focus turns to solution finding, based on the grounds that all actors in a project have justified claims, but also a great common goal:

Success of the project’s mission.

In the specific case, finding a solution was relatively easy: The idea of possible litigation at a foreign court was uncomfortable for all of them. Litigation costs money, time, and energy that could be better used for another project assignment. The challenge was to find a settlement that satisfied all justifiable claims and allowed the project to be successful by turning parties into partners.

Solving the Root Causes of the Problems

How could it happen that core questions of a project, which involved the creation of intellectual property, were not clarified right at the beginning and in a form that is equally valid for all parties involved?

These questions are:

- Who owns the copyright?
- Who may use the copyright, and under what rules?
- Which legal basis is used to settle copyright questions?

The failure to answer these questions did not only lead to conflicts in business interests. In addition, tensions grew, as some contributors to the project had a very emotional relationship with their work and felt humiliated, even bullied by what they perceived as disregard towards their entitlements. As a consequence, the project was endangered.

The root causes were:

- Insufficient elucidation of copyright matters.
- Insufficient understanding of copyright laws by the parties involved.
- Insufficient consideration of the differences in copyright law by the parties involved.

⁶ See my previous article on Project Business Healing Days at PM World Journal (Lehmann, 2022)

For the further execution of the project and also for similar future projects, I gave some recommendations:

- Select an appropriate legal system and a place of jurisdiction that suits the needs of the project and the parties involved.
- If a party is objectively disadvantaged by this selection, e.g. due to local distance or language, reimburse it for taking the additional risk or protect it otherwise.
- Educate all parties on the basics of the applicable copyright laws to ensure that there is a common understanding of what is acceptable behavior and what is not.
- Instead of a network of bilateral verbal and written contracts, use a multilateral contract that parties join in order to work on the project (see Figure 2). Such contracts are often called “Project alliances” or similar.

In a larger project, this may include the foundation of a new business entity: A customer-led consortium, which is a temporary joint venture by the parties. Another term for this business vehicle is “Project alliance”.

In a smaller project such as the one in the example above, a contract regulating the cooperation of the parties involved would be sufficient.

In contrast to an opaque network of bilateral contracts between the parties, the multilateral contract generates transparency and a feeling of belonging.

- Clarify the handling of copyright matters in the contract.

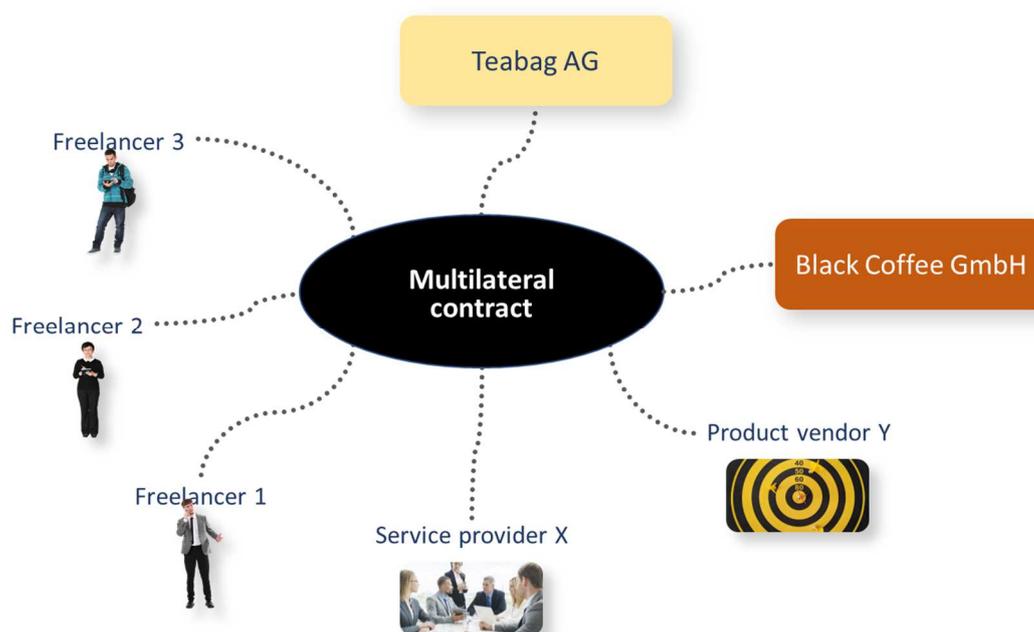


Figure 2: A multilateral contract replaces the individual contracts and assures a common understanding and handling of copyright matters by all parties involved.

Can Project Business be “Shiny”?

It takes courage to address issues before they grow into problems or even crises. The faint of heart wait until the problems are unmissable; however, by that time, it may be too late to resolve them. It should go without saying that educational institutions in project management address these issues. Why don't they do it?

Indeed, looking at associations, literature, Academia, professional training, and discussions in social networks, one can make a strange observation: Everyone discussing project management does it with a focus on internal projects. All over, the focus is on transforming organizations and making them agile and future-proof.

However, the trend is observable and measurable⁷: More and more project work that would have been performed internally in the past is today outsourced to external contractors.

A similar transformation occurs in industries with a long history of outsourced project work, such as construction, infrastructure, and complex engineering: The networks of contractors, subcontractors, and other players sharing the burden of organizing and doing the project are growing in complexity, number of organizations involved, and opaqueness of business relationships.

When some organizations act as customers, interested in the results of the projects, while others bring money home as contractors, the rules that govern project management are changing.

Why is this trend so widely neglected?

I believe it has to do with shininess. At first glance, internal projects seem more glossy: Their topics are transformation, strategy implementation, and making an organization futureproof or more agile.

Project Business, in comparison, seems transactional, prosaic, and boring. However, this view is biased.

My favorite example of a “shiny” Project Business was the development and market launch of the first COVID-19 vaccine by the US company Pfizer and its contractor, the German company BioNTech. As shown in Figure 3, when the race was on to be the first on the market with an effective, safe, and approved vaccine, the two companies and, with them, an array of subcontractors over several tiers were the fastest.

Neither Pfizer nor BioNTech would have been able to achieve this success alone, which helped protect millions of lives and flushed an incredible amount of money into the coffers of the two organizations.

⁷ (Project Business Foundation, 2021)

The Race for the COVID-19 Vaccine (Approvals in the EU; status: 12-2022)

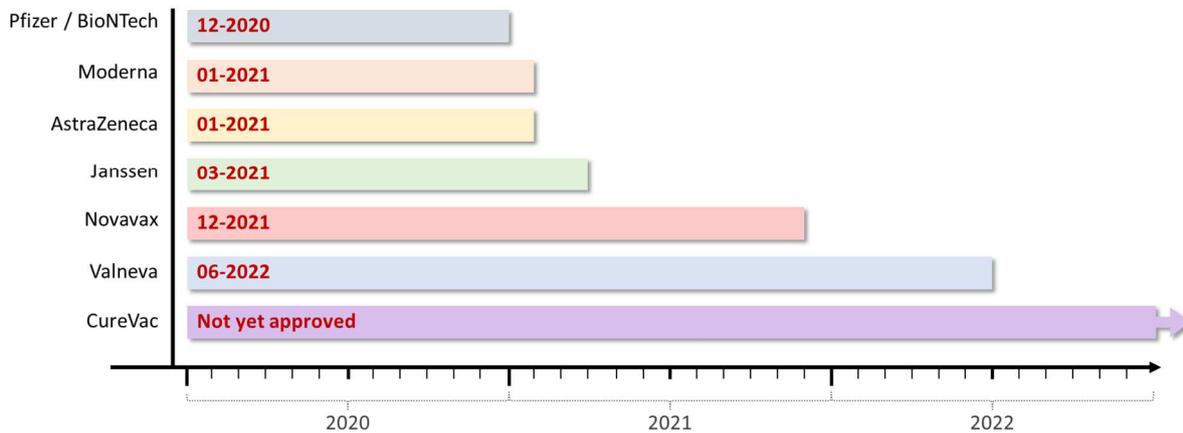


Figure 3: In the EU, Pfizer teaming up with BioNTech and more contractors were the race winners.

Project Business can well be shiny. It deserves the full attention of the experts in project management.

Conclusions

Professionally performed, Project Business can lead to highly successful projects. By putting together their assets and turning them into project resources, organizations that team up can achieve successes together that one organization alone may not be able to accomplish.

However, Project Business is high-risk business. Project managers should be educated to understand and successfully address these risks. Meticulously executed, this can be a rewarding task for all organizations involved in the professional education of project managers.

Project Business requires courage from the people involved. They have to address issues before they become problems or even crises. This takes education to help them understand these issues early and know how to respond to them.

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Copyright Note

Text & illustrations:

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About the Author

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Oliver F. Lehmann, MSc, ACE, PMP, is a project management educator, author, consultant, and speaker. In addition, he is the owner of the website Project Business Foundation, a non-profit initiative for professionals and organizations involved in cross-corporate Project Business.



He studied Linguistics, Literature, and History at the University of Stuttgart and Project Management at the University of Liverpool, UK, where he holds a Master of Science Degree (with Merit). Oliver has trained thousands of project managers in Europe, the USA, and Asia in methodological project management, focusing on certification preparation. In addition, he is a visiting lecturer at the Technical University of Munich.

He has been a member and volunteer at PMI, the Project Management Institute, since 1998 and served as the President of the PMI Southern Germany Chapter from 2013 to 2018. Between 2004 and 2006, he contributed to PMI's *PM Network* magazine, for which he provided a monthly editorial on page 1 called "Launch," analyzing troubled projects around the world.

Oliver believes in three driving forces for personal improvement in project management: formal learning, experience, and observations. He resides in Munich, Bavaria, Germany, and can be contacted at oliver@oliverlehmann.com.

Oliver Lehmann is the author of the books:

- "[Situational Project Management: The Dynamics of Success and Failure](#)" (ISBN 9781498722612), published by Auerbach / Taylor & Francis in 2016
- "[Project Business Management](#)" (ISBN 9781138197503), published by Auerbach / Taylor & Francis in 2018.

His previous articles and papers for PM World Journal can be found here:

- <https://pmworldlibrary.net/authors/oliver-f-lehmann/>