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Negotiate Book Contracts with Publishers

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Negotiate Book Contracts with Publishers

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Slides for this workshop will be in
[OpenCommons@UConn](#)

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“Negotiate Book Contracts”

Companion Guide

<https://guides.lib.uconn.edu/negotiatepub>



How to Negotiate with Publishers – Home

- Home
- Copyright for Authors
- Copyright Transfer Agreements
- Negotiating with Publishers
- Things to Ask For
- Things to Watch Out For
- Author Addenda
- Resources

Introduction for Authors



Once the manuscript is written, it's time to seek a publisher. Most publishers have standard contracts, often called Copyright Transfer Agreements (CTAs), but authors do not have to agree to those standardized terms. This guide's purpose is to empower authors to recognize unfavorable terms in contracts and to seek the best possible terms for publishing their work.

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Librarian



Carolyn Mills

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Subjects:

Outline

- Introduction
- Overview of Copyright
- Understanding Copyright Transfer Agreements (CTA's)
- Negotiation Principles and Techniques
- Author Addenda
- Book Contract Specifics
- Practical Exercise
- Resources

Objectives

By the end of the workshop participants will be able to:

- Define the basics of copyright.
- Discuss why retaining copyright is useful for academic authors.
- Recognize the sections of a publishing contract.
- Identify common book contract terms and explain why they are important to authors.
- Revise book contract terms to better reflect the needs of authors.
- Plan to negotiate changes to a publishing contract that are advantageous to the author.
- Identify 2-3 sources of additional information on negotiating with publishers to keep copyright.



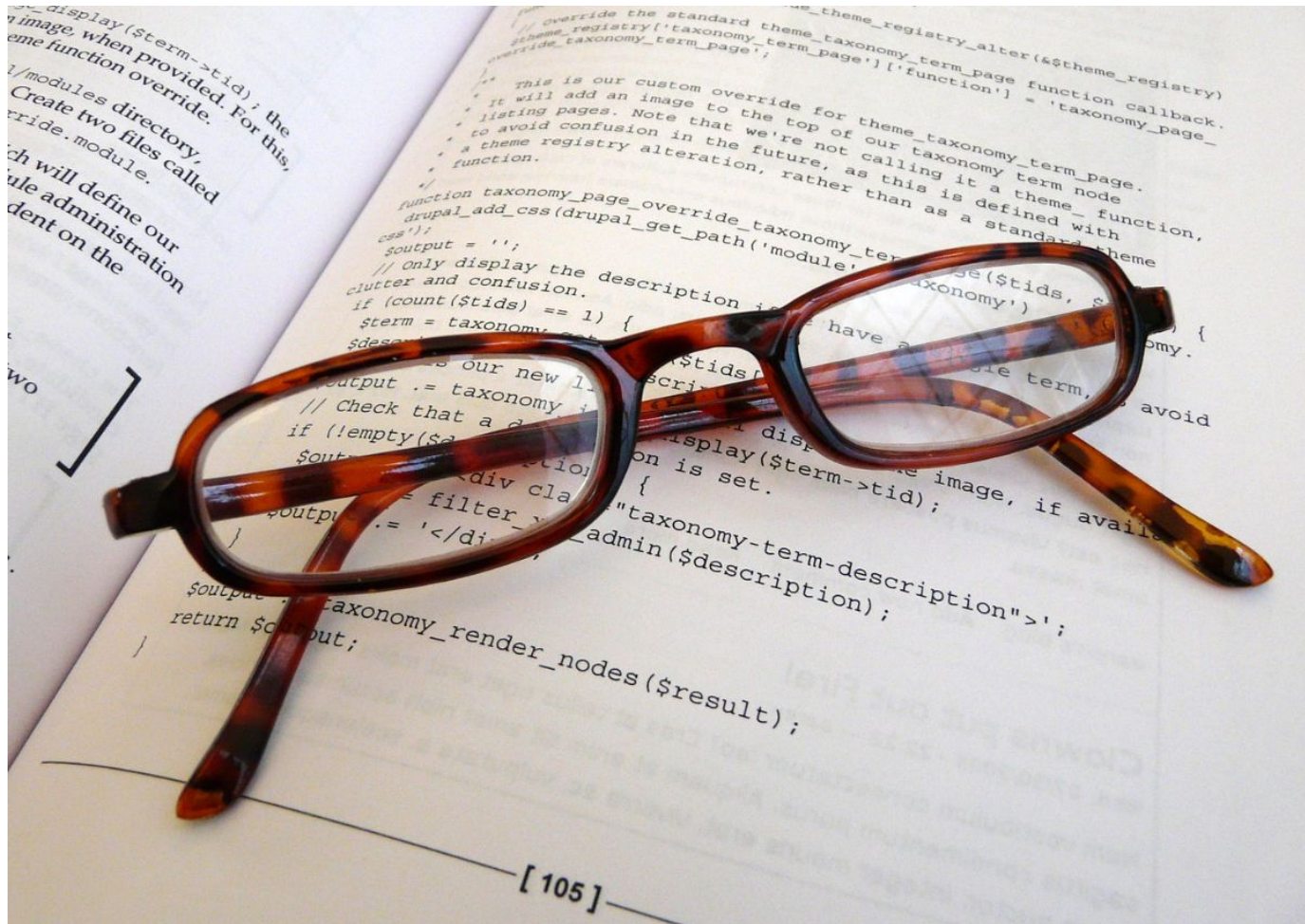
What is copyright?

- An exclusive set of rights granted to the creator
- Automatic for tangible creative work
- Not for facts or intangible ideas
- In the Constitution
- Legal versus moral rights



Copyright is a bundle of rights

- The right to reproduce the work
- The right to distribute the work
- The right to make a derivative work
- The right to perform the work
- The right to display work



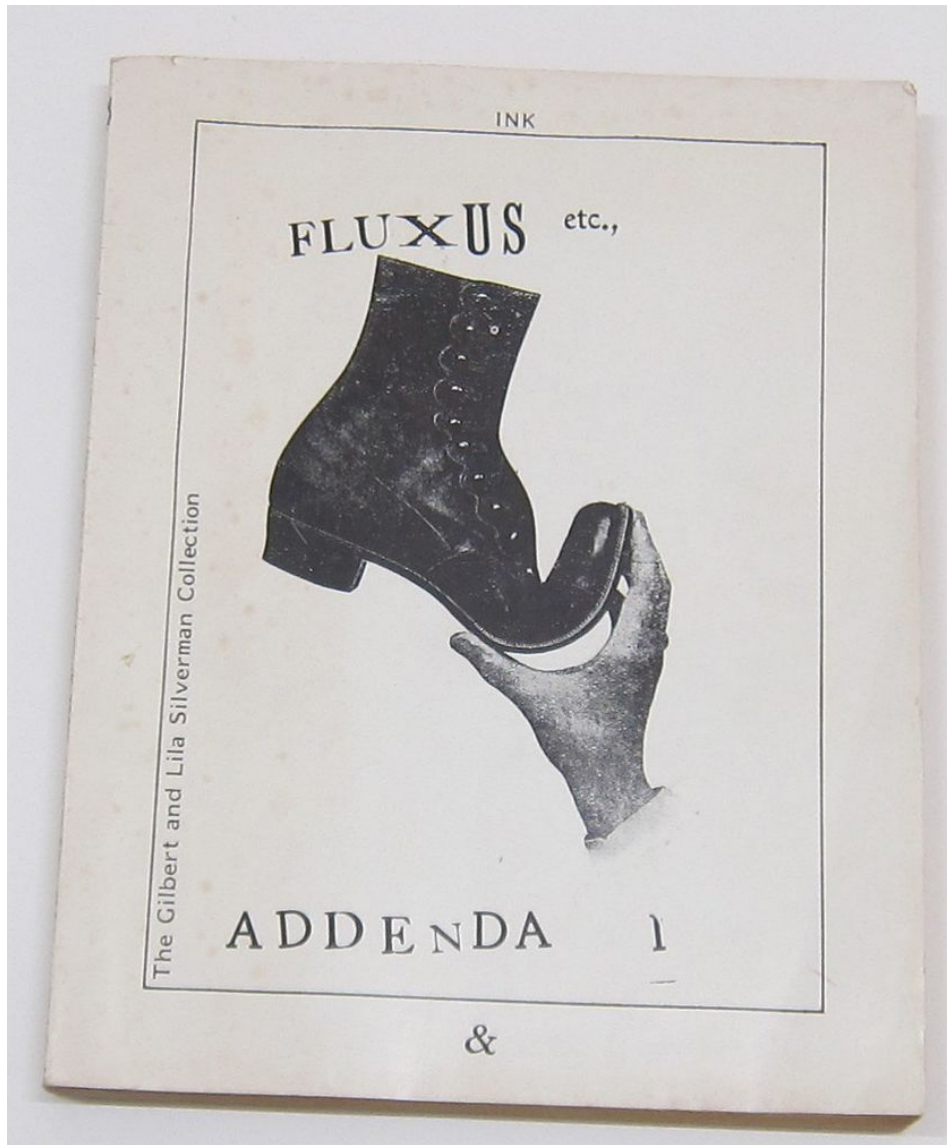
Why Copyright Matters to Authors

- Your manuscript is your intellectual property
- Publisher is asking for permanent ownership
- Entire bundle of rights is not needed to publish and distribute



Why do we give up copyright?

- Tradition – academics have given up their copyright for decades or longer
- Time and effort – authors don't want to deal with another task or problem
- Publishers seem to expect it
- Author fears losing contract if it is challenged
- Author doesn't like conflict



What are Author Addenda and what do they do?

- Legal instruments used to modify CTA's
- In existence for more than a decade
- Standard legal language tested over time
- Easy to use so little expertise is needed
- Known by publishers

Addenda for Authors

The major addenda available for use by scholarly authors are:

- SPARC Author Addendum to Publication Agreement
<https://sparcopen.org/our-work/author-rights/sparc-author-addendum-text/>
- UConn Modified Author Amendment to Publication Agreement
<https://lib.uconn.edu/research/scholarly-communication/author-rights/>
- Scholar's Copyright Addendum Engine
<https://labs.creativecommons.org/scholars>

All These Addenda:

- Keep non-exclusive rights for author (some scholarly, some non-commercial)
- Give author right to use published version of manuscript
- Acknowledge potential for existence of prior non-exclusive licenses, either for funder policies, institutional policies, or both
- Some details differ in each, *but the basics are the same*

Know Thyself & Thy Publisher

- Know thyself
 - What is your position? Are you tenure-track? Or hobbying?
 - What are your goals? Revenue? Reputation? Readership?
- Know thy publisher
 - Small or nonprofit versus large or commercial
 - Business needs
 - Profit margins
 - In-house counsel
 - Marketing and distribution
- Find the right publisher to help you achieve your goals.

Approaching Negotiation

- Negotiate for the win-win
- Always ask—early and often
- Be open to bartering and compromise
- Pick your battles—what is most important to you?
- Make a practical case for the publisher to say yes
- Cultivate positive working relationship with editors
- Be on the same page with your coauthors early on
- Know your alternatives

Conducting Negotiation

- Ask courteously and clearly (email, phone) and explain what you want. Go back and forth with your editor, often several times.
- Strike through or write in! Print out and mark up the agreement or use the comments and track changes in Word or Adobe. Offer alternative terms. Explain your reasoning succinctly.
- OR add addenda (such as the SPARC Addendum).

Typical Sections of a Book Contract

- Summary and grant of rights
- Manuscript specifications
- Acceptance and publication
- Mutual obligations (mostly yours)
- Warranties and indemnification
- Payments/royalties
- General provisions

Grant of Rights

Three types of grant of rights

- Assignment (copyright transfer agreement)
 - © [Publisher Name]
- A exclusive license
- A nonexclusive license

Your grant of rights governs what the publisher can do, where, when, and how.

Mixing and matching

- Can ask for rights to be licensed back to you
- Can license some rights exclusively and other nonexclusively
- Can limit the duration of rights

Important Elements in Book Contracts

- Rights reversion
- Competing works
- Future option to publish
- Copyright registration
- Royalties
- Advances and honoraria
- Other compensation
- Subsidiary rights
- Author liability
- Satisfactory manuscript
- Other important elements

Rights Reversion

What happens if book goes “out of print”? Under what conditions can rights revert to author?

Rights reversion has three parts:

- A triggering condition
- Steps that happen after trigger is met
- Additional obligations

Competing Works

Publishers may include a non-compete clause to protect their investment.

Things to consider include:

- How is a competing work defined?
- The length of time the clause lasts – should not be open ended
- If there is disagreement between author and publisher over whether a new work is competing, who decides?
- Are scholarly articles excluded?

Future Option to Publish

Publishers often want the option to publish an author's next work, but not an obligation to do so. Most likely this will take one of two forms:

1. The option to publish a future work under the same terms as the current work
2. The right of first refusal on a future work without designating terms

Copyright Registration

- It's best to keep your copyright and license your work instead
- The publisher should register your copyright for you – write it into the contract
- Designate a time limit by which this will be done, for example within 3 months after publication
- Registering the copyright protects the author in cases of infringement
- Registering the copyright also makes it easier for future users to ask permission to reuse your work

Royalties

Authors are paid for their work through royalty payments, usually as a percentage of sales. Pay attention to how this is determined.

1. Based on the book's published price. This is usually the best deal and certainly the easiest to track for the author.
2. Based on the publisher's net income from sales of the book. This should have a higher percentage because it is based on a lower price.
3. Based on publisher's net profit, after publishing costs deducted. Less common, and the author's percentage should be much higher.

Be sure to have a right-to-audit clause so that you can review the accounting that your royalties were based on.

Advances & Honoraria

- Advances are deducted from royalties. Negotiate as high an advance as possible as this may be the only money you'll see. Advances should be nonrefundable unless you fail to deliver a satisfactory manuscript.
- Advances should be due on contract/manuscript delivery or within 60 days. Publishers have been known to delay execution or publication.
- Honoraria are sometimes paid for encyclopedia articles or book chapters.
 - Ask for minimum of 15¢ a word. Your mileage may vary.
 - If chapter is for a mainstream textbook, push hard for compensation.
- Make sure the honorarium does not create a work-for-hire relationship.

Other Compensation

- Complimentary author's copies--whatever number is given in the standard contract, ask for twice as many
- 50% discount on additional copies (and donate a copy to the UConn Library for our faculty authors program!)
- Ask for your book to be sold to libraries in ebook format
- Electronic copy (e.g., a PDF) that you can keep and share
- Cover licensing fees for third-party materials you've included
- Cover your costs for book-signing tours and review copies

Subsidiary Rights

- Sublicensing by the rightsholder (author or publisher) to third parties
- Consider whether (1) your publisher is optimal for exploiting these rights, and (2) your book could be monetized meaningfully in these ways
- Paperback, electronic, audio, dramatization, serial, book-club rights
- Reproduction in anthologies and edited volumes
- Translation rights
- Foreign rights

Author Liability

- Liability clauses are usually called “warranties and indemnification”
- Covers issues like originality, infringement, breach of privacy, libel, etc.
- Most publishers have media liability insurance, so liability clauses that put all the responsibility and all the risk on authors are unreasonable
- Interject qualifiers such as “to the best of the author’s knowledge”
- Limit your obligation to actual breaches of your promises (“warranties”), rather than covering unfounded lawsuits or claims that might arise
- Cap your liability or ask to be added to publisher’s insurance

Satisfactory Manuscript

- Contract specifies elements such as length (word count), subject matter and content, delivery dates, and any additional material to be delivered.
- How does the contract define “satisfactory,” and does the publisher have sole discretion to determine that? This is where specificity helps authors. Push to have the manuscript accepted as long as it conforms to the book proposal, the technical specifications, and meets scholarly standards.
- Who is responsible for the index? Art? Rights clearance? Copyediting? Clarify each of these responsibilities in the contract.
- If the publisher insists on a strong termination clause, make it reciprocal so that you both have the right to walk away.

Other Important Elements

- Modifications to the manuscript
 - All substantive changes to the manuscript by editors or copyeditors should require author approval.
- Book design, cover, and title
 - Authors should be consulted on the look and feel of their books.
- Deadline for publication
 - If publisher fails to publish the book within a designated period, the contract terminates and all rights revert to the author
- Revised editions (esp. textbooks)
 - Strike this obligation or require second advance or royalty raise

Practical Exercise

Sample Agreements

- [Oxford University Press Publishing Agreement](#) (books)
- [Duke University Press Publication Agreement](#) (book chapters)
- [Maven House Press Publishing Agreement](#) (books)

Questions

- What seems positive for authors?
- What seems concerning for authors?
- What are you unsure of?

Brianna L. Schofield & Robert Kirk Walker, Eds.

Bridge · Diaz · Hagen · Kuksenkova · Nikogosyan
Samuelson Law, Technology, and Public Policy Clinic

UNDERSTANDING
AND NEGOTIATING
**BOOK PUBLICATION
CONTRACTS**

Authors Alliance · No. 4

**Authors Alliance Guide to
Understanding and Negotiating
Book Publication Contracts!**

https://www.authorsalliance.org/wp-content/uploads/2018/10/20181003_AuthorsAllianceGuidePublicationContracts.pdf



MODEL TRADE BOOK CONTRACT

Select a Section:

- 1 The Work. ▶
- 2 Grant of Rights.
- 3 Copyright.
- 4 Advance Against Royalties.
- 5 Royalties.
- 6 Subsidiary Rights.
- 7 Delivery.
- 8 Termination of Agreement.
- 9 Publication.
- 10 Reversion of Rights.
- 11 Sublicenses.
- 12 Promotional Materials/Promotion by Author.

1. The Work.

This AGREEMENT (the "**Agreement**") is made this _____ day of _____, 20____, between _____, with an address at _____ (the "Author"), and _____, with offices at _____ (the "Publisher").

Author will deliver to Publisher a new and original manuscript tentatively entitled _____ (the "**Work**"). The Work shall be a work of [fiction/nonfiction] containing approximately _____ words [and _____ photographs/illustrations]. The Work shall: [*brief description of the work*] (the "**Description of the Work**").



Commentary

This section describes the prospective work. It is important to make sure it accurately describes the book—other parts of the agreement, including acceptance of the manuscript and non-compete or option clauses, may hinge on it. For contracts issued based on a proposal and before the book is written, the work can be identified by a tentative title and by describing the proposed content, format, length, and/or

Authors Guild Model Trade Book Contract

<https://www.authorsguild.org/member-services/legal-services/model-book-contract/>

Resources

Copyright

- [US Copyright Office](#)
- [Columbia Univ Copyright Basics and Fair Use Checklist](#)
- [Cornell University Copyright Management for Authors](#)

Contracts

- [Columbia Univ Sample Clauses and Contracts](#)
- [Author's Alliance Publication Contracts](#)
- [Author's Guild Improving Your Book Contract](#)
- [CUNY Library Negotiating a Favorable Book Contract](#)

Negotiation

- [How to Retain Ownership of Your Copyright when Dealing with Publishers](#)
- Fisher, R., Patton, B., & Ury, W. (2011). Getting to yes: Negotiating agreement without giving in. 3rd ed. Penguin Books. [UConn Library catalog](#).