

Reviewing Publisher Agreements

Many authors/creators immediately sign and return the contract they've been sent when a publisher agrees to publish a work without really understanding what the contract says. However, it's very important for you to understand exactly what your rights are and what you might be giving up when you sign the publisher's contract.

At the time you create any original work, you simultaneously become its copyright owner. As the copyright owner, you are granted the following exclusive rights under the U.S. Copyright Law (17 USC 106) (<http://www.copyright.gov/title17/92chap1.pdf>):

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Authors/creators retain the copyright to their works until they assign it to someone else. Many times publishers will want authors to assign their copyright to them in exchange for publishing the work. The decision to assign copyright is serious and impacts any future use of your work.

It is up to you whether to assign all of your rights, some of them, or none of them to a publisher. You might want to retain some of your rights so that you can use your works in the following ways:

- To post your work on your website
- To distribute copies to colleagues
- To reuse portions of the work or all of it in future publications
- To add to your institutional repository

Use the checklist below to document the status of the copyright on your published work. Always keep a copy of your contract with the post-print version of your work (version of your work after reviewing and editing changes have been made). For additional information on copyright, please [e-mail](mailto:DigitalCommons@Cedarville) the *DigitalCommons@Cedarville* administrator.

Copyright Checklist

1. Many publishers will want you to assign your copyright to them in exchange for publishing your work. Look for a transfer or assignment of copyright agreement in your contract. Does the agreement require you to grant all, or "exclusive", rights to the publisher?

_____ Yes. In this case, you, as the author/creator, retain NO rights to distribute, reproduce, publicly perform, publicly display, or use your work without the permission of the publisher/producer.

_____ No. In this case, determine which rights (often referred to as "non-exclusive rights") you still retain.

2. Continue reading the contract. Even after asking you to transfer all copyright to them, many publishers will still grant authors/creators the rights to use their work in certain ways. Determine what rights are granted to you, if any, and in what version or format.

These rights may include:

- _____ The right to archive electronically in the organization's institutional repository (*DigitalCommons@Cedarville*)
- _____ The right to transmit, print, and share copies with colleagues
- _____ The right to reuse in other publications (check for any qualifications or restrictions)
- _____ The right to use in teaching or training, such as in course management packages, library e-reserves, presentations at conferences, or in distance learning teaching (again, check for any restrictions)
- _____ The right to be identified as the author (this should be included in all contracts)

Permissible versions may include:

- _____ Pre-print (original submitted version before reviewing and editing – good)
- _____ Post-print (version after peer review and editing – better)
- _____ Published version (post-copyediting and typesetting to the journal's style – best, but rarely granted)

Permissible formats for re-use may include:

- _____ Electronic _____ Print

Also, check for any embargo that the publisher may place on your work. An embargo is the length of time that must transpire before some or all of the above are actually permitted. In other words, the publisher wants it in their published version for a while before it can be reproduced anywhere else.

- _____ 6 months _____ 12 months _____ 18 months _____ other

3. If the publisher retains all author rights or so many that it will inhibit your ability to teach, research, and create new knowledge, you do have some copyright management options.

- a. It is sometimes possible to modify the publisher's copyright agreement with an "addendum" that defines rights reserved to the author/creator. Please see the Addendum to Publication Agreements for CIC (Big 10 +2) Authors (<http://www.cic.net/Libraries/Library/authorsrights.sflb>), which you may want to attach to all negotiations with publishers.
- b. Researchers who receive funding from the National Institutes of Health (NIH) must submit all final peer reviewed manuscripts that were a result of the funding to PubMed Central (the National Library of Medicine's online database) within twelve months of publication. Any copyright transfer agreements that researchers enter into must contain language that allows the researcher to comply with this law.
- c. Select publishers that encourage widespread dissemination of scholarship and creativity and optimize short- and long-term access to your work. The copyright policies of many journals and publishers can be found at the Sherpa/Romeo (<http://www.sherpa.ac.uk/romeo>) website. Select publishers that share your goals as a scholar.
- d. Rather than assigning copyright to the publisher, grant them an exclusive or non-exclusive license. An exclusive license is one in which the copyright holder grants to the publisher sole permission for using the work for a certain period of time. A non-exclusive license is when the copyright holder allows multiple people to use the work. For examples of non-exclusive licenses, check into Creative Commons (<http://creativecommons.org/>) licenses.

4. Under the U.S. Copyright Law, if you have already transferred your copyright to a publisher you may be able to reclaim your copyright by sending a termination notice to the publisher and registering the termination with the United States Copyright Office (<http://www.copyright.gov/>). This does involve a fee.

If you transferred your copyright on or after January 1, 1978:

- a) termination must occur either 35 years from publication or 40 years from the date of assignment of copyright to publisher;
- b) termination must occur within a 5 year period or the reversion right is forfeited;
- c) termination notice must be served on copyright holder no later than 2 years before time expires and up to 10 years before beginning of 5 year period.

Example: If the work was published in 1978, then the termination window is 2013-2018. The notice must be submitted no later than 2016 and no earlier than 2003.

If you transferred your copyright prior to January 1, 1978:

- a) termination must occur between 56-61 years after copyright is secured;
- b) termination must occur within a 5 year period or the reversion right is forfeited;
- c) termination notice must be served on copyright holder no later than 2 years before time expires and up to 10 years before beginning of 5 year period.

Example: If the work was published in 1944, then the termination window is 2009-2014. The notice must be submitted no later than 2012 and no earlier than 1999.