

# *Publishing Law: What You Need To Know*

The act of publishing involves distributing or otherwise making public a visual or literary work. In publishing, the two most important players are publishers and authors. Information is disseminated to the public by publishers. In addition to writers and journalists, the term author is commonly applied to photographers, filmmakers, video artists, and other artists whose work is published. Other publishers typically [assign a lawyer](#) to review a publishable work and identify any potential legal pitfalls. A legal liaison may consult with [outside legal counsel](#) to ensure that neither the publisher nor author is embroiled in legal battles. Publishing has [many legal issues](#) unique to it, including copyright violations and trademark infringement, sales, advertising, distribution policies, subscription agreements, special sales arrangements, insurance, freedom of speech, tax matters, and antitrust concerns arising from membership in trade associations. Similarly, other employees of publishers, such as editors, should be trained to spot potential legal problems with work and bring them to the attention of the legal liaison before publication.

In addition to being liable for their authors' omissions, mistakes, and transgressions. Publishing companies consistently face issues about copyright and trademarks as one of their top priorities. Copyright and trademark issues should be thoroughly researched before a work is published. Among other things, publishers should ensure that copyrights are properly registered; the appropriate copyright notice is placed in each work; copyrights for work published prior to the effective date of the most recent federal copyright act, the Copyright Amendments Act of 1992 (2 U.S.C.A. 179 et seq.), are renewed; the work does not violate the copyrights or trademark rights of another publisher or author; all copyrights are duly affixed to the work; all copyrights from source materials have been released or paid for; the work does not defame anyone; the work does not invade a person's right of privacy; all obligations to authors, creators, and illustrators under the contract are being met; information from sources can be verified or has been confirmed; and any material derived from a dialogue between real people that is placed in quotation marks correctly sets forth the actual words spoken.

A fascinating area of law deals with publishing books, journals, newspapers, magazines, and their electronic equivalents. While the principles of publishing law remain the same, changes are constant. Manifestations of the law in legislation and by case law reflect both technological progress and our cultural tradition - as well as changing parliamentary and judicial fashions. By offering us a cracked mirror of our literary culture, the law illuminates the blemishes of our profession.

We will summarize some of the headline features of the law in this post: those things that everyone involved with publishing should be aware of:

## **1. It is a Chimera**

Although many different areas of the law use variations on the concept of a publication, there is no unitary body of law exclusively dealing with the publishing industry. In publishing law, these areas of law are the most important - copyright, defamation, contempt, etc. The subject is, in other words, a mixture of many [legal issues](#): it is a chimera.

## **2. Importance of Copyright**

Copyright law lies at the core of our chimera, providing legal protection for works that are endemic to publishing, such as books, journal and magazine articles, blogs, and other literary works. A copyrighted work cannot be published without the permission of the owner of the copyright.

## **3. Exploitation and Contract**

Literary works are protected by copyright, but they are effectively exploited by contract law. Contracts can be

drafted to codify the rights that copyright creates (including rights to copy and publish works).

#### **4. Assignments vs. Licences**

There are two main types of dealing. Copyrights are assigned when formally transferred, while licenses are given when they are explicitly granted to do something otherwise would be an infringement. Most kinds of publishing, such as trade publishing, involve licensing instead of assignment. In some cases, licenses are assigned rather than licensed.

#### **5. Writing It Down**

There should be a written agreement for all or most publishing rights. In English law, unwritten contracts are permissible, but those which involve a legal assignment or licensed exclusive copyright are required to be written. Even when a publishing arrangement does not include an assignment or exclusive licence, it is sensible to write it down. In addition to providing the best documentation of the contract, well-written agreements reduce the risk of a dispute and assist in managing a conflict, should one arise. Publishing businesses can become unsellable if their contracts are not adequately documented.

#### **6. Fees, Royalties, and Advances**

An author will typically be compensated either through a fee or with royalty under a publishing contract. Whenever royalty payments are made, an advance must be earned out before royalty payments begin. The agreement includes an assignment of copyright for fees, while the publishing deal features a license. In practice, however, many publishing agreements integrate duties and future royalties or licenses and fees and legal fees.

#### **7. Works and Warranties**

Authors generally have to warrant their work to a publisher (by affirming the accuracy of various statements). Publishers might ask an author to certify that the work is original, has never been published previously, and will not infringe on the copyright of any third parties. It is common for publishing contracts to include various warranties regarding content liability. The publisher - and sometimes other people involved in the publication and distribution of work - may be liable if the work contains legally problematic material.

#### **8. Forms of Content Liability**

By publishing a written work, one can infringe upon many different types of legal rights, and commit many different types of legal wrongs. For example, a single work could: be libelous or maliciously false; be obscene or indecent; infringe copyright, moral rights, database rights, trademark rights, design rights, rights in passing off, or other intellectual property rights; infringe rights of confidence, rights of privacy, or rights under data protection legislation; constitute negligent advice; constitute an incitement to commit a crime; be in contempt of court, or breach of a court order; violate racial or religious hatred or discrimination legislation; be blasphemous; or be in violation of official secrets legislation.

#### **9. Moral Rights**

The majority of works that are protected by copyright are also subject to moral rights. It is not generally possible to transfer moral rights, though they may at least be waived under English law. A work's paternity (i.e. attribution), its right to object to derogatory wording, and its right to object to a false attribution are among the most important moral rights.

#### **10. Law and Litigation**

A risk-averse publishing company does not litigate often. It is especially rare for them to sue individual authors, partly because the authors may not have assets worth pursuing, partly due to the expense of litigation, partly due to their desire not to appear unfriendly to authors.

See Also: [Shaun C. Clark Enjoys the Variety and Challenge of Being a Top Entertainment Attorney](#)

# What is a Book Publishing Agreement?

A book publishing contract is a legally binding agreement between an author and a publisher that specifies all the terms of their publication deal, such as payments to be made, timelines to be followed, etc. A written agreement guarantees both the author and the publisher their interests are protected and that the agreement is followed by setting out all the terms as agreed.

## What To Consider When Signing A Book Publishing Contracts?

**Grant of Rights:** The grant of rights is part of every book publishing contract. There are two types of rights in a publishing agreement: primary rights and subsidiary rights. Publishing the book in print and electronic form is considered the primary right to the book. Publishers are typically granted these rights by the author. The situation differs for subsidiary rights. Subsidiary rights include the right to make adaptations of the book, the right to translate the book to foreign languages, the right to grant others permission to publish excerpts from the book, the right to publish audiobooks, the right to produce films based on the book, etc. As a general rule, the author should only grant these rights to the publisher if the publisher is best placed to exploit them. Whenever any of these rights are granted to a publisher it is vital that the contract provides for the author to be remunerated for the exploitation of those rights.

**Clearances/Permissions:** An agreement must clearly state who is responsible for obtaining authorization from third parties in order to use their work in the book. In most cases, the author is responsible for getting clearance. This makes sense since the author is the best person to know what third-party materials have been used, but the author may not always have the opportunity to obtain permission. A middle ground would be to ask the author to identify all third-party text materials used in the book and the publisher to obtain permission. The cost of obtaining clearances can be offset against royalties payable to the author.

**Delivery:** The manuscript should be delivered by the author by the deadline. This clause should also spell out how the content of the manuscript should be communicated and what the publisher will do if the content is not satisfactory. Upon receiving the publisher's objections, the author should be informed and should be allowed to revise and resubmit the manuscript at least once.

**Competing Works Clause:** It is always in the publisher's interest to have a clause in the publishing agreement prohibiting the author from writing competing works. A publisher's ability to exploit the book may be adversely affected if the author is able to write competing works or materials.

**Revision Clause:** Any necessary changes and updates should be included in the agreement by the author. In another alternative, the publisher may wish to retain the right to nominate an alternative author to revise the book and to continue using the author's name for such a revision.

**Warranties and Indemnities Clause:** A publisher should be indemnified by the author against any claims made by third parties against the book, such as for copyright infringement, defamation, invasion of privacy, etc.

## Publishing Contract Challenges

Contracts and licensing law pose the second set of legal obstacles. We have already discussed several of them, but let's look at them together here:

**1. Publishing Contracts:** An author's content or book contract must be clearly spelled out, comprehensive, and reasonable, as indicated above, the publisher's number-one priority.

Regarding clarity and comprehensiveness, contracts with authors must clearly and comprehensively delineate the rights meant to be taken; grant the publisher the right to approve the final manuscript, edit the work, and select appropriate titles and covers (often in consultation with the author); establish submission deadlines; specify the author's responsibilities and warranties; allow periodic revisions and updates to be made by the publisher; specify the publisher's editorial and publication responsibilities (reprint rights, which means republishing the book within twelve to eighteen months of acceptance); and include appropriate option and non-competition requirements.

Regarding reasonableness: If you treat authors fairly, it will not only enhance your relationship with them but also reduce the likelihood of your contract being overturned in court if challenged.

Fairness often boils down to the rights acquired from authors. Especially when it comes to [motion picture and television rights](#), savvy authors and their representatives, including their [copyright lawyers](#) and agents, can get frustrated when publishers demand more rights than they can effectively exploit. Consider, therefore, whether it is fair to demand these rights from the author if you do not intend to market them or have the ability to do so. Otherwise, the publisher receives a small share of the revenues the author generates.

**2. Licensing Agreements:** Subsidiary rights can generate substantial revenues for publishers. It is also possible for a publisher to shoot himself in the foot if licensing is done incorrectly. The publisher and their copyright lawyer should develop contracts with clear and precise language that outlines the rights granted and prevents the licensee from abusing those rights or worse, creating a competitor through inept drafting.

**3. Distributor/Reseller Arrangements:** Most publishers consider their channels of distribution, they must be aware of the implications of exclusive agreements and ensure they do not grant exclusives unless the license has the capability of being terminated at any time at short notice or requires minimum revenue and sales levels. As well as providing discounts to distributors, publishers should also consider the relationship between authors' royalties that they pay. Then you may have to reduce royalty rates or percentages payable to your authors if you offer huge discounts to distributors or you could dramatically decrease your own profits.

## Is Plagiarism Punishable By Law?

Plagiarizing is the act of taking someone's original work and presenting it as one's own. The United States recognizes plagiarism as a legal practice in most instances. An individual's employer or school may discipline him or her for violating honor and ethics codes. Legal action may be taken against plagiarism if it violates a patent, trademark, or copyright of the original author. It is also possible to sue for plagiarism if the original work was previously deemed unacceptable under the contract.

*The New Shorter Oxford English Dictionary* defines the verb "plagiarize" as follows: "Take and use as one's own (the thoughts, writings, inventions, etc., of another person); copy (literary work, ideas, etc.) improperly or without acknowledgment; pass off the thoughts, work, etc. of (another person) as one's own." "Plagiarism" is the noun form of this verb.

The term is said to have its origins in the writings of Martial(is), the Roman poet, who is one of his works drew a parallel between his poems and freed slaves; he termed another poet who had misrepresented his (i.e. Martial's) works as being his own, a "*plagiarius*," or, an abductor, of them.

Plagiarism, in essence, is the act of someone publicly misrepresenting their ability to create an output; they claim to be the original author. The antidote to plagiarism is the attribution of the source to the original author.

Even if the original author of the output consents to a copyist using his or her work, copying intellectual output violates the plagiarism rule. A copyist cannot rely on the original author's consent as long as he or she presents the work as his or her own, and does not acknowledge the source. This means that copyists must accurately represent the work.

The quantity of output copied is irrelevant when output is copied. It is not necessary for a substantial part of the output to be copied to violate the rule, perhaps subject to the de minimis principle - a legal doctrine intended to dismiss frivolous matters. In contrast, a copy of output for purely personal use is not a violation of the rule, since the authorship is not misrepresented to any third party.

Regardless of whether the original author of the output objects to plagiarism, third parties can and often will condemn it. A university, for instance, might censure plagiarism. Both third parties and the original author are wronged by plagiarism, which misrepresents authorship. Plagiarism is thus enforced at the expense of the misrepresentations' victims. In addition to dishonor, discrediting, and perhaps vilifying the plagiarist, the sanctions for plagiarism may include suspension, expulsion, or dismissal from membership in a professional organization. Unlike infringers of a legal right, a violation of the rule carries no economic or proprietary penalties.

It is always a good idea to properly attribute the source of any information one uses through citations or quotes to avoid plagiarism. In addition, there are many free online plagiarism checkers to ensure that a person's work is original, such as Grammarly, Duplichecker, and Quetext.

## Copyright Challenges

Copyrighted content is the most valuable asset of most book publishers. After all, copyright law is what gives publishers the ability to control the content, which, in turn, enables them to make money by selling books and licensing subsidiary rights (e.g., into drama, movie rights, television, electronic rights, and multimedia), and merchandising (e.g., calendars, toys, and lunchboxes). As a result, understanding, exploiting, and avoiding infringing copyright is a key legal challenge for publishers. The following are the most significant copyright issues for publishers.

**1. Author Grants:** In order to publish a book, the rights of the authors must be properly obtained. There are two ways to accomplish this. The majority of trade publishers are specifically granted exclusive licenses over the author's copyrights (or a broad assortment of them). On the other hand, most academic and professional publishers prefer to be assigned these rights, thereby obtaining a complete ownership interest. Despite these differences, virtually all publishers recognize the right of authors to recuperate their copyrights when their books go out of print and the publisher ceases to exploit them. Furthermore, some publishers allow their authors to keep certain subsidiary rights, including film, television, drama, and electronic.

**2. Copyright Procedures:** The second step for publishers is to protect their copyrights. This means using proper *copyright notices* on published works (including the international copyright symbol, date of publication, and name of the copyright owner) and, at least for significant works, copyright *registration* in the name of the owner. The copyright notices notify the world that the work is copyrighted, and deny infringers the opportunity to argue that they are innocent of the infringement. It provides other benefits, including the right to recover statutory damages and attorney fees for infringements occurring after registration (or after publication if registered within three months of publication).

**3. Copyright Licenses:** A third related measure is to grant licenses to third parties with precision and caution. In addition to ensuring it owns or controls the rights it licenses, the publisher must ensure that its licensing agreements are clearly written and drafted narrowly so that no additional rights are granted.

**4. Protecting Against Infringement:** In addition to implementing appropriate procedures and training personnel, a fourth copyright measure is to prevent infringement of others' rights. This includes both (i) "due diligence" inquiries of authors and, where appropriate, independent investigation of competing works and identified background sources, particularly where the manuscript contains substantial references or quotes from third-party materials, or where the topic is highly popular; and (ii) comprehensive and protective warranties and representations from authors that confirm there are no problems.

Despite author reluctance to warrant that their works do not violate third-party rights, or at being required to indemnify publishers for breach, publishers need such "tough love" provisions in order to force authors to take these issues seriously. Authors, once they realize that they are responsible for infringements (as well as defamation, privacy violations, and similar problems), are more willing to cooperate with publishers in



identifying potential issues and assisting in their resolution. The publishers, in particular, should ensure that authors have not incorporated copyrighted materials into their works without permission or unless the material borrowed is fair use. Fair use is a challenge for all publishers but has particular relevance for those who produce (i) parodies, commentary, and criticism; or (ii) books whose chapters begin with quotations or song lyrics.

**5. Internet and Electronic Uses:** The topic of copyrights in publishing cannot be discussed without mentioning the problems created by new electronic distribution and reproduction methods. The law has become more predictable over the last few years, largely resulting from some noteworthy cases, particularly *The New York Times v. Tasini*, 533 U.S. 483 (2001) (holding that reuse of freelancers' articles in text-only electronic databases is not authorized by the Copyright Act and therefore constitutes copyright infringement) and *Random House v. Rosetta Books*, 150 F. Supp.2d 613 (S.D.N.Y. 2001) (holding that the right to publish a work "in book form" does not convey the right to publish an electronic book). Despite this, there are still many unexplored territories. An important piece of advice on this topic is that a publisher cannot assume it has the right to publish books online, in e-book format, as multimedia works, or in any other electronic format unless the contract is clear and specific. Have your [copyright lawyer](#) review your contract before you use a work online or in any other electronic medium.

## Who Is a Publisher and What Do They Do?

It is not just about printing and selling books for publishers. In addition to author selection and development, manuscript editing, promotion, distribution, and financial management, they oversee the entire publishing process.

The knowledge you gain about how book publishers work will help you decide which writing career path appeals to you and how to prepare for it.

**Author Identification, Selection, and Development:** In order to create books that sell, publishers first need to find writers who can do it. It is therefore one of the roles of a book publisher to identify authors. Literary agents, or authors' agents, are hired by large publishers to screen manuscripts and prepare them for submission.

As soon as a publisher becomes interested in a writer, it assigns an editor to work with him or her to clean up the manuscript and create a book that sells. Editors may ask authors to drop or add characters, change plotlines, and add or remove chapters.

Copy editors primarily focus on grammar, spelling, and fact-checking, while editors shape titles to maximize sales.

Publishers employ editors for a variety of roles, from evaluation and acquisition to author development to copyediting, proofreading, and line editing.

**Book Title Development:** Even if a publisher likes an author's submission that does not mean the book will be published as written. Publishers make decisions based on formulas that sell. A publishing house typically assigns its editors to a specific genre. Beginning with fiction or nonfiction, it can progress to specific genres such as romance, children's horror, young adult, adventure, politics, self-help, how-to, picture book, or mystery.

There are staff members at the publishing house who specialize in each of these categories and can provide guidance on how to rewrite parts of their books to better meet the expectations of consumers who purchase books in these categories. In some books, sex scenes need to be toned down or spiced up, for example, depending on the genre.

**Author and Book Promotion:** If no one knows about the book, it does not matter how well the author writes. Media interviews and signings are two ways publishers promote authors and books. The media receive advance copies of books and press releases. A book-of-the-month club, bookstores, online sellers, and other book distributors promote the book.

A bookseller can also nominate a book for an award and promote an award-winning author. Authors are tracked by publishers to see if they make any best-seller lists or win awards. Their social media channels and media contacts have then broadcasted this news and subsequent editions of the book are printed with this information.

Media interviews and public appearances are part of the publisher's training. Not only do they assist in picking the right clothes, but they might also conduct mock interviews and use the kinds of questions that are generally asked by interviewers for books.

**Production and Distribution:** Books are printed, illustrated, and distributed by book publishers, including in brick-and-mortar and online stores. Publishers might first sell the book in hardcover format to cash in on early adopters and then quickly add softcover editions based on how well they think the book sales went.

Booksellers distribute e-books as well as work on formatting and selling digital versions. These publishers have experience working with these sellers and formatting digital titles for readers, tablets, and other apps.

**The Rise of Self-Publishing:** Authors can now publish their own books using self-publishing technology. As an example, Amazon offers services that assist writers with designing a book, creating it into a digital version or print version, selling it on Amazon, setting a price, and collecting money.

Despite the fact that self-publishing allows writers to keep all of the profits, it does not provide the experience and support publishers have in all areas of the book publishing process. A writer must also be a part-time book sales promoter, or hire someone who can do this.

**The Role of Agents:** Publishers prefer to work with agents rather than amateur writers who are not ready to make the jump to publication. A publisher knows a manuscript is published or near publication-ready when it's sent to them by an established book agent.

Using their knowledge of what many publishers want, agents make sure a book has commercial potential before submitting it. An agent can connect authors with editors who can help them edit their manuscripts to make them more commercially viable.

In addition to helping writers modify their books' plot lines and characters, agents also help them find a publisher. Authors can decide whether they should self-publish and agents can assist with that. Alternatively, self-published books can be promoted by agents.

By bringing publishing houses books that are boring to read or do not have good sales potential, literary agents do not want to damage their reputation with them. Because of this, when agents agree to represent authors, they do their best to entice publishers to accept the book.

In addition to negotiating contracts and compensation, agents assist publishers. Having a publisher in mind will allow them to make the right requests, which a new author might not make. This will prevent rejections.

Although literary agents are not attorneys, they have enough experience with standard contracts that they can advise an author and the author's attorney on whether to accept or reject contracts the writer is offered.

## Copyright Information for Writers

Your writings are your own property, but registration with the U.S. Copyright Office will entitle you to monetary damages in cases of infringement, which is rare with literary works. Generally, you should wait until your book is contracted for publication; your publisher should then copyright the book in your name.

To avoid granting your work's copyright to a publisher, you should avoid signing a book contract. It is never the publisher's responsibility to own your work if yours is a "made for hire."

You should consult an agent or a lawyer with experience in publishing before signing a book deal.

**ALL RIGHTS:** Ownership of one's creations. You cannot use the same work in its current form again if you give the publisher all rights for your work. You must purchase the right to include a story in an anthology from the publication that already owns the rights to that story, for example. All rights are owned by the owner, who is free to reprint or sell your material elsewhere without paying you any additional fees. This includes all of the rights listed below.

**ELECTRONIC RIGHTS:** Electronic versions of your work, including electronic books, may be published or allowed to be published by others. Depending on the contract, this may be labeled as "e-book rights". You want to grant verbatim text English language rights for "electronic rights" or "e-book rights." Other features such as audio or video can be classified as "enhanced e-book rights" or "multimedia." Changing technology will continue to expand the definition of electronic rights.

**EXCLUSIVE RIGHTS:** A publication that is not simultaneously appearing elsewhere. A publisher may request exclusive rights for three months, six months, or a year, for example. Your work can be published elsewhere after the exclusive period expires.

**FIRST NORTH AMERICAN SERIAL RIGHTS (FNASR):** You are entitled to be the first publisher of your work once in North America. It is possible to sell first serial rights to the same work outside of North America by selling first North American serial rights.

**FIRST SERIAL RIGHTS:** Your right to be the first publisher of your work. Once the work is published, all rights revert to you.

**REPRINT RIGHTS:** The right to print a work a second time. Reprint rights imply that the first rights for the works published have been sold.

**SUBSIDIARY RIGHTS:** These are further rights giving the publisher the ability to license your work to others, including the right to publish first and second serials, audio rights, film rights, foreign rights, translation rights, book club rights, the right to reprint excerpts from your work, rights to electronic editions, rights reversion, and performance rights.

**WORLDWIDE RIGHTS:** Your book will be published in English in all countries. Publishers increasingly demand worldwide rights as more and more conglomerates operate internationally.