CONGRATULATIONS! Someone wants to publish your work. Publication is always thrilling; but in the flush of excitement, don’t give away more rights than you should. Publication agreements sometimes come across as a take-it-or-leave-it kind of thing, but many aspects of a publication agreement can be negotiated.

Why care? Often restrictive publishing agreements transfer all rights to a publisher or grant an exclusive license to the publisher. This usually isn’t necessary and can prevent you from even using your own work in the future, including (1) prohibiting making copies for your own classes, (2) keep you from posting portions of your work on personal or University Web sites or other online repositories, or (3) using your work in other research activities within a fast-changing technological or scholarly environment. You gain flexibility and freedom to make your work more widely available by protecting rights to your intellectual work. Clarify before you sign the agreement.

Who owns the work? As the author of a work, you are the copyright owner until you transfer copyright ownership in writing to someone else—that’s the law. Unless substantial University resources are used, obligating you to share potential profits, you become the copyright owner of your authored works. If you have cooperated with other writers, you each have part interest in the work and share rights and benefits that might come from it.

Before you sign on the dotted line:

1. Contemplate: What are the possible present and future uses of your work? While many publishing agreements grant most rights to the publisher, publishers do not need all the rights they sometimes request. What rights do you need for personal and institutional use? At a minimum, expect to retain the rights to use your work for classroom use, distance teaching, lectures, seminars, institutional repositories, other scholarly works, and professional activities.

2. Review the agreement: Make it a habit to read the fine print. What does it allow or not allow? Watch for words like all, exclusive, and sole. Carefully review the section of the publishing agreement titled Author’s Rights or a similar section. Ask a colleague to help read the contract. Ask the contact editor to clarify language.

3. Negotiate: Once your work has been accepted, a publisher has a vested interest in your work, having already invested months in you with the review process. Let that work for you and do not be afraid to negotiate! Publishers need to secure right of first publication, but more and more authors are successfully reserving the rights to use their works for themselves and their institutions through open discussion and negotiation. Propose inclusion of an author’s addendum. Bring to a publisher’s attention that you expect to reserve rights not needed for publication. Hold onto the rights that are already yours!

4. If you retain the copyright, clarify with a publisher which party is responsible for registering the work with the U.S. Copyright Office (usually a publisher does this for books, and always for journals collectively). Be sure to explore and specify the possibility of limiting a publisher’s control of your work by inserting a sundown clause to their rights, such as a date, after which rights revert to you.

After you sign

1. Confirm the publisher accepts any changes to the agreement—better, ask them to submit a signed agreement to you rather than a blank one. Otherwise, the publisher should approve the changes you make. The agreement is valid only when it is signed by both parties.

2. Keep a copy for your records. You may need to accurately recall or show evidence as to who owns rights to your work. A complete file of publishing agreements is useful and recommended for future reference.

3. Use and protect your rights and promote this idea with others. If you retain rights to use the work for both yourself and educational or research purposes, promote those rights for your benefit and the benefit of your readers. Urge colleagues to insist on publication agreements that will not restrict the use of their scholarship.

It’s Your Right!
For example . . . . . . . . . . .

Good licensing for a single creative work may permit one licensee to publish a hardcover book while paperback rights are assigned elsewhere, another person to produce a theater production, a third to generate a film screenplay, another to adapt it for television, somebody else to adapt the work as a musical for the stage, and a different group to develop a computer game or multimedia CD-ROM based on the work. Creating specific license grants of very narrow or limited terms under the copyright owner’s bundle of rights is really limited only by the creative skill of whoever drafts the agreements.

A good license for a scholarly work would reserve for the author all rights other than publication, such as adaptation for other works, posting the published piece to an institutional repository hosted by the employing institution or professional society, use the work in classes without limitation, create derivative or cooperative studies based on the work.

Without clearly reserving some rights, an author will be required to abide by limits imposed by fair use and educational use exemptions in the copyright law. Moral: Don’t sign away more than is absolutely necessary; an agreement must be carefully crafted to avoid inadvertently granting away rights beyond what is intended and necessary.

Publishing is a business—treat it as such.

For Your Information . . . . .

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http://www.arl.org/sparc/author/addendum.shtml


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