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## How to Retain Ownership of Your Copyright when Dealing with Publishers

### (A Very Short Guide to Negotiation)

The term "negotiation" may be a bit formal, and may bring to mind images of legally sophisticated advocates vying for advantage over one another by inserting arcane phrases into a complex document. Rest assured that such a scenario is not being referred to here. Nevertheless, in seeking to retain some or all of your copyright when submitting a manuscript for review and publication, you are entering a negotiation, and ASU Libraries offer this succinct guide to help you be successful in your dealings with publishers.

First and foremost, understand that you are in control. You are not begging the publisher for a favor, a hand-out or a concession. Your manuscript is your intellectual property – you own it. The publisher is asking you to give up ownership of your intellectual property so that the publisher can turn around and sell that property to its subscribers. The publisher is gaining a major benefit in obtaining your work for free, so you are in an excellent position to ask to retain certain rights. In fact, all the publisher needs in order to publish your work is your permission. You do not need to transfer all your rights to the publisher.

**A Note on Individual Rights :** "Copyright" is actually a group or "bundle" of rights. An author has complete discretion over these rights and can transfer all or part of them, or even just components of the rights themselves. A full discussion of copyright is available in F.A.Q. and will soon be available as a podcast on this website.

A successful negotiation with a publisher can be a very easy process and most of the time it will follow the same pattern. Once your article has been peer reviewed and accepted for publication, the publisher will send you a letter along with a legal document for you to sign (usually called an "assignment of copyright" or "transfer of copyright"). You contact the publisher and ask to retain certain rights. A back and forth discussion will ensue, as you try to understand each other's needs and concerns, and finally, an acceptable agreement is reached and the final draft signed.

The important steps in this process are preparation before contacting the publisher, the actual back and forth discussion and closing the deal with a signed writing.

### Preparing

- **Understand the basics of copyright, so that you know what you own and what you can transfer in a copyright agreement. [See [Copyright](#) and [Copyright and Intellectual Property Glossary](#)]**
- **Make a list of the things you want and the things you need.**
- **Consider how your requests affect the publisher.**

The most important step in any negotiation is preparation. To be successful know what you need (and what you cannot concede), and what you want (and what you're willing to concede); then consider these things from the publisher's perspective. It is helpful to reduce these considerations to writing because the process focuses your thoughts and can often result in finding that your initial

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perception of your goals isn't entirely accurate, or that your goals change with further consideration.

What you need depends on what definite plans you have for your work after publication; these are things that are "deal-breakers" meaning that if a publisher won't agree to them you will be willing to walk away from that publisher and find another avenue for publication, or maybe decide not to publish the article for the time being. For instance, if you are working on a compilation of your writings that will form a textbook, then you need to retain the right to use the article as part of a derivative work or compilation. If a publisher is unwilling to concede these things, can your textbook survive without this particular material, or is the textbook more important than the separate publication of this single article? If the textbook is more important, then this is a true need and a deal-breaker.

What you want depends on potential uses for your work in the future. Maybe it would be useful to post your article to a departmental or institutional repository to share with your colleagues, though the department doesn't require it. In order to do this, you must retain at least a limited right to republish and/or distribute the work. You can seek to retain the necessary rights and if the publisher will not agree, then you can still concede the issue and move on to other areas of the negotiation.

Consider also what the publisher needs: most publishers are in business to make money, while others exist to disseminate scholarly research but must still pay for overhead. So when you ask to retain certain rights, it's important to know ahead of time how this will affect the publisher's revenue stream. For instance, if you are seeking to retain the right to post your article to a departmental or institutional repository to share with your colleagues, a publisher may worry that permitting free, unlimited access to the article in such a way will detrimentally affect sales of their journal. Knowing this will help you in later discussions with the publisher.

### Discussing

- **Where possible, have in-person or telephone discussions. Correspondence works, but it is more time consuming and lacks some of the advantages of verbal conversations.**
- **Frame your requests in a way that explains your needs and offers to work with the publisher to find an acceptable agreement.**
- **Remember to barter.**

The most important thing to remember is that communication is the key to success. Face to face communication is best, because individuals engaged in discussion can see body posture and facial expressions, and hear vocal tones and inflections that convey information subtlety. Plus, when meeting face to face, there is a natural tendency for the parties to try and resolve all of the outstanding issues at the meeting, avoiding the need for additional meetings. Of course, many times it won't be possible to negotiate face to face, and so telephone conversations are the next best method of communicating, because they still convey two of the three benefits of face to face communication.

Most often, however, you will likely be dealing with correspondence, either traditional or electronic, and so you will have to account for the limitations of these mediums. Because the recipient can't read your posture or tone, it is very important to fully express everything in writing that would otherwise be conveyed in a face to face meeting. For instance, a short, direct email meant to save time can often be mistaken for terse, or even rude, by the recipient, and thus risks beginning negotiations on the wrong foot. More importantly however, a short, direct email risks failure because it does not allow for much information to pass to the recipient. Don't presume that your motivations or needs are obvious to the publisher – explain why you seek to retain the enumerated rights.

For instance, if you'd like to retain the right to upload use your work on Blackboard, explain how Blackboard is an integral part of your class plan, and how disruptive it would be to have your published work unavailable through that medium.

Overall, explanations are helpful to the process; however, keep in mind that many people, publishers included, view negotiations as a bartering game. They expect you to ask for more than you will ultimately accept, and they will initially offer less than they will ultimately accept. So, two important tenets of bartering in this context are (1) ask for more than you need, and (2) don't tell the publisher which of your

requests are deal-breakers and which aren't. During discussions, you can then trade away requests that matter less to you for requests that are more important (especially the deal-breakers).

Of course, it is not necessary to trade away a request entirely in order to come to agreement. If the publisher refuses a particular request, you can still attempt to gain the concession: ask what concerns caused them to refuse on this particular right, and suggest that you work together on a solution that addresses the needs of both parties. As an example, consider a request to retain the right to post your work on your personal website. If the publisher won't agree to this, ask why. The answer might be that your website is available to the public, and so their exclusive content could be downloaded by anyone without a subscription. You could agree to post it behind a limited-access area of your site, or to post it six months after publication.

**A Note on Opening Negotiations** : it is much easier to pick up the phone and explain what you're interested in doing, and then send along a follow up letter according to what is decided in the conversation. If that isn't possible, sending a letter to the publisher explaining your interest in retaining certain rights, your reasoning and asking whether they'd prefer to a new contract an addendum to their contract is the next best thing. ASU Libraries provides some examples of contracts and addenda ("riders") to help guide you.

### Closing the Deal

- **Make sure all agreements made are explicitly stated and understood before ending negotiations.**
- **Memorialize the agreement in a signed writing.**

Although these steps sound obvious, they are very important and worth at least some small discussion. It is easier than it seems to misunderstand what a party is offering or agreeing to, and it is also very easy to forget details during a discussion. This is why it is important once you feel an agreement has been reached to restate the terms generally and have the other party review them before you end discussions.

Once you have agreed explicitly to the terms, a signed writing is necessary both because copyright must be transferred in writing under the law, and because promises made orally may or may not be enforceable after the fact. Although publishers are fairly sophisticated legally and should know better, you will find that too often they assure you that it will be alright to use your work in the ways you seek to, but they suggest that you simply sign their contract without getting these promises in writing. Don't fall for this - insist on writing that reflects your agreement.

### For More Information and Additional Resources

- [Copyright and Intellectual Property Glossary](#)
- [Contract Sample](#)
- [Rider Sample](#)
- [Link to Addenda](#)



## Retaining Your Copyright: An Introduction to the Use of the Author's Addendum

### What is covered by copyright?

Any content you create in a tangible format! Not only scholarly work, but even your to-do list at home, your monthly report, your email messages, your child's art work or notes you take at meetings and presentations.

### What is not covered by copyright?

- Facts
- Ideas
- Lists, e.g. telephone book!
- Public domain materials

### Do I have to register copyright?

No! Copyright protection is automatic, but if you wish, you can register with the U.S. Copyright Office. You also may provide a copyright notice, for example: © 2005 Trisha L. Davis  
More information is available at: <http://www.copyright.gov/register/>

### What rights does the Copyright Law provide?

The Author's Bundle of 5 Rights:

- Right to Reproduce
- Right to Prepare Derivative Works
- Right to Distribute
- Right to Display Publicly
- Right to Perform Publicly

And by default, the right to authorize others to exercise any of these rights.

### What happens when I sign a Publisher's Agreement?

You may unknowingly sign away all your personal rights, including Fair Use! This means you may have to request permission to:

- use your own works for a course pack;
- store a copy on your web site;
- distribute a copy to colleagues.

<http://library.osu.edu/sites/copyright/>

**So, what can I do?**

- Explicitly retain ownership of your content.
- Transfer only \*some\* of your rights to the publisher.

**What rights can I retain?**

- The “Author’s 5 Basic Rights” in connection to any personal, professional or non-profit educational activities.
- The right to grant the author’s home institution any of the 5 Basic Rights.

**How can I retain those rights?**

- Only sign a publishing agreement after you read and understand the content.
- Talk to your publisher about granting only those rights needed for their publication.
- Try to keep all other rights, specifying those of particular value to you or your institution.

**I’m not a lawyer! Is there a place I can get information?**

Yes! There are several sources publicly available that you can use. Two convenient ones are from Scholarly Publishing and Academic Resources Coalition (SPARC) and Indiana University.

SPARC Author’s Addendum, available at [www.arl.org/sparc/author/addendum.html](http://www.arl.org/sparc/author/addendum.html), was developed by Michael Carroll of the Villanova University School of Law.

Indiana University has two addenda available at: [www.copyright.iupui.edu/nego\\_doc.htm](http://www.copyright.iupui.edu/nego_doc.htm)

- Addendum A: Spells out specific rights retained by the author.
- Addendum B: Describes in general terms the rights retained by the author and the author’s home institution

**For further information contact:**

Copyright Help Center  
The Ohio State University Libraries  
Science and Engineering Library, Room 002  
175 West 18th Avenue  
Columbus, Ohio 43210  
(614) 688-5849  
[libcopyright@osu.edu](mailto:libcopyright@osu.edu)

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