

Reserving Rights of Use in Works Submitted for Publication: Negotiating Publishing Agreements

A Project of the
IUPUI Copyright Management Center

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Creators are . . . encouraged to seek from publishers and other persons to whom Creators assign rights in their intellectual property, a non-exclusive, royalty-free license for their own non-commercial research and teaching and, where possible for anyone within the University to use that intellectual property for non-commercial research and teaching.

-Indiana University Intellectual Property Policy

Despite efforts to encourage faculty to retain rights in their own works, creators too often forfeit rights that may be reserved for even the author's own future scholarship and education. Many publishing agreements for journal articles and books are standard forms that ask the creator to transfer the copyright and all rights in the work to the publisher. As a result, even the author is barred from making many uses of his or her own work, including sharing with students and colleagues, without the publisher's permission (unless the use qualifies as a fair use or is otherwise statutorily exempted).

In order to avoid these serious consequences, the creator should negotiate with the publisher for terms that allow the continued academic use of the work by the creator and their home University.

What should a faculty author do? Follow these simple steps to protect your rights through better contracts with publishers:

- **Step One: Anticipate your future needs to use the materials.**

- o Most license agreements are standard forms which predictably grant most, if not all, rights in the work to the publisher. Publishers are unlikely ever to need all the rights they are seeking in these standard agreements. Instructors are encouraged to "carve out" reasonable rights for themselves and their educational institutions.

- o At a minimum, professors should attempt to reserve the right to use the work for their classroom, distance teaching, lectures, seminars, other scholarly works, and professional activities. For more ideas, see the model amending language proposed in Step Three.

- **Step Two: Understand the terms of the agreement.**

o You may not want to wade through the fine print of your contract, but you need to appreciate that your future scholarship may be at stake. Understanding the rights that you, as the creator of the work, may be giving away to another party and may be keeping can prove essential. Authors are encouraged to spend as much time as needed to understand the proposed agreement.

• **Step Three: Negotiate!**

o Do not be afraid to negotiate. Publishers are interested in your work, otherwise they would not have asked to publish it. As stated before, instructors have found much success reserving reasonable terms of use of the work for themselves through negotiations.

o If the publisher refuses to negotiate, investigate the reason. Perhaps you have asked to reserve the right to do something that legitimately threatens the viability of the publisher's use of the work. At this point, weigh your options: consider negotiating fewer rights for yourself, consider another publisher, or accept the agreement as it stands—if you must.

o Amendments to the publisher's agreement may take place in two ways. One way to amend the agreement is to strike through unfavorable language and replace it with, or add, new language directly in the proposed agreement. Perhaps easier is to supplement the agreement with a separate document that includes terms superseding any contradicting terms within the proposed agreement.

o Model language for amending publisher agreements. Addendum A is specific, and individual items may be added or dropped in the negotiations. Addendum B is more general and does not attempt to specify exact activities. Use the version that best meets the needs of your situation.

• **Step Four: Execute the agreement.**

o Be sure to obtain confirmation that your amendments to the agreement are received and accepted. Many times, publisher agreements are sent to the creator already signed by a representative of the publisher. Changes made to the agreement after it has been signed by the publisher must be approved by the publisher. Otherwise, there is no “meeting of the minds,” and therefore, no valid agreement. Be sure to get approval from the publisher to any such changes in writing.

o Keep a copy for your records. Too often authors need to prove who really holds rights to early publications, but the records have since been lost.

• **Step Five: Protect and Use Your Rights!**

o If you remain the copyright owner, consider registering your copyright claim. For more information, see www.copyright.gov/register.

o If you hold onto rights to use the work for education and future research, make the most of those rights for your benefit and the benefit of your readers.

Addendum A (Specific Uses):

Addendum to Publishing Agreement

Publisher:

Author:

Work:

This addendum modifies the terms of the publishing agreement referenced above.

Notwithstanding any term in that agreement to contrary, the parties hereby agree that the Author shall, without limitation, have the following rights with respect to the Work:

1. To reproduce and distribute the Work in copies in connection with the Author's teaching, conference presentations, and lectures.
2. To make an electronic version of the Work available on a website that the Author may control.
3. To make an electronic version of the Work available on course management systems or electronic reserve systems that have access generally limited to students enrolled in specific courses.
4. To contribute and make available an electronic version of the Work on a digital repository of works created at the Author's home institution, which repository is maintained by said institution.
5. To use all or part of the Work as a contribution to scholarly works used within the Author's home institution.
6. To create and publish revisions or updates of the Work as deemed appropriate by the Author.
7. To make available by any means to any person any updates or corrections with respect to the Work as deemed necessary by the Author.
8. To make derivatives of the Work

Signatures:

Author _____

Publisher's Representative _____

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Addendum B (General Rights of Use):

Addendum to Publishing Agreement

Publisher:

Author:

Work:

This addendum modifies the terms of the publishing agreement referenced above.

Notwithstanding any term in that agreement to contrary, the parties hereby agree that with respect to the work that:

- The Author shall, without limitation, have the right to use, reproduce, distribute, update, create derivatives, and make copies of the work (electronically or in print) in connection with the Author's teaching, conference presentations, lectures, other scholarly works, and professional activities.
- The Author's home institution shall, without limitation, have the right to use, reproduce, distribute, and make copies of the work (electronically or in print) in connection with teaching, digital repositories, conference presentations, lectures, other scholarly works, and professional activities conducted at the Author's home institution with the Author's written permission.

Signatures:

Author _____

Publisher's Representative _____

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