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Oct 16th, 10:00 AM - 11:30 AM

## Working and Negotiating with Publishers: The Devil's in the Details

Johnson Center for Creative Teaching and Learning  
*Gettysburg College*

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**Description**

Several people have expressed interest in meeting to talk about what's involved in dealing with publishers, what kind of questions should one ask, and what aspects of a contract are especially important to pay attention to. Join Julie Hendon, Scholarly Communications Librarians Janelle Wertzberger and Chris Barnes, and special guests Dan DeNicola (Philosophy) and Radi Rangelova (Spanish/LACLS) for an informal discussion of these issues based on your concerns or questions. We also welcome questions related to journal publishing or being a contributor to an edited volume. We're not lawyers or literary agents but we have experience with publishers, especially those involved in academic or scholarly publishing. Sponsored by the Johnson Center for Creative Teaching and Learning.

**Location**

Musselman Library 018

**Disciplines**

Scholarly Communication | Scholarly Publishing

# Working and Negotiating with Publishers: The Devil's in the Details

A discussion-focused meeting sponsored by the Johnson Center for Creative Teaching & Learning  
October 16, 2017

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Several people have expressed interest in meeting to talk about what's involved in dealing with publishers, what kind of questions should one ask, and what aspects of a contract are especially important to pay attention to. Join **Julie Hendon**, Scholarly Communications Librarians **Janelle Wertzberger** and **Chris Barnes**, and special guests **Dan DeNicola** (Philosophy) and **Radi Rangelova** (Spanish/LACLS) for an informal discussion of these issues based on your concerns or questions. We also welcome questions related to journal publishing or being a contributor to an edited volume. We're not lawyers or literary agents but we have experience with publishers, especially those involved in academic or scholarly publishing.

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## Copyright is a “bundle of exclusive rights” that includes the right to:

1. **Reproduce** the copyrighted work.  
This means making copies (print or digital) for anyone – colleagues, students, conference attendees, the public.
2. **Prepare derivative works** based on the copyrighted work.  
This allows the copyright holder to adapt, compile, or create new works based on the protected work.
3. **Distribute** copies of the copyrighted work.  
This includes selling, renting, leasing, or lending.
4. **Perform** the copyrighted work publically.  
This is the right to perform literary, musical, dramatic, or choreographic works, to screen motion pictures, and to transmit sound recording.
5. **Display** the copyrighted work publically.  
This is fairly obvious, but also includes the right to display individual images from motion pictures.

Gettysburg College  
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Library

Most standard publisher contracts ask authors to transfer copyright in its entirety to the publisher, but authors can retain individual rights when negotiating contracts. It benefits authors to seek a workable balance between maintaining some control over their creation and giving publishers the rights they need to fulfill their role in the publication process (distribution, promotion, profit, etc.). One approach is for authors to grant a license to the publisher for certain rights while maintaining copyright over the work.

### Remember:

- You can only transfer or license rights in writing (usually via a contract)
- Note the difference between a copyright transfer and a license. A good analogy is that copyright transfer is like selling a house (the owner has total control over what happens to the property in the future), while a license is like renting (the owner decides who can rent it and under what terms, but still owns the property).
- Licenses can be exclusive or non-exclusive. If you assign a non-exclusive license to someone, you are free to assign another non-exclusive license to someone else. You can only assign a single exclusive license, though.

## What does this look like in contract language?

Publisher-friendly language	Author-friendly language
<p data-bbox="94 358 447 383">GRANT OF EXCLUSIVE RIGHTS</p> <ul data-bbox="142 431 1031 781" style="list-style-type: none"> <li data-bbox="142 431 1031 634">• “The Author grants and assigns <b>exclusively</b> to the Publisher <b>all rights</b> in the Work including the <b>exclusive right to print, publish, sell, perform, display, transmit, store, reproduce, adapt and license the Work</b> or any part thereof, under all laws, treaties and conventions throughout the world in all forms, languages, and media now known or hereafter developed.</li> <li data-bbox="142 646 1031 781">• The Author will permit and hereby authorizes the Publisher to register in the name of the Board of Trustees of the University of Illinois, a body corporate and politic, the copyright for said Work in the United States of America and in any and all other countries.”(Illinois UP)</li> </ul> <p data-bbox="94 824 1031 1101">“The Contributor hereby grants and assigns to Publisher the <b>exclusive, sole, permanent, world-wide, transferable, sub-licensable and unlimited right to reproduce, publish, distribute, transmit, make available or otherwise communicate to the public, translate, publicly perform, archive, store, lease or lend and sell</b> the Contributions or parts thereof individually or together with other works in any language, in all revisions and versions (including soft cover, book club and collected editions, anthologies, advance printing, reprints or print to order, microfilm editions....” (Springer)</p>	<p data-bbox="1060 358 1482 383">GRANT OF NON-EXCLUSIVE RIGHTS</p> <ul data-bbox="1108 431 1982 816" style="list-style-type: none"> <li data-bbox="1108 431 1982 670">• “In consideration of the Publisher’s agreement to publish the Work, <b>Author hereby grants license to Publisher the right to print, publish, reproduce, display, broadcast, edit, and distribute the Work</b>, in whole or in part, throughout the world in all languages and by all forms now known or hereafter developed, including electronic format, and to market, sell or license the Work or any part of it as it sees fit.</li> <li data-bbox="1108 682 1982 781">• Author further grants Publisher the right to use Author’s name in association with the Work in published form and in advertising and promotional materials.</li> <li data-bbox="1108 792 1982 816">• <b>Copyright of the Work remains in Author’s name.”</b></li> </ul> <p data-bbox="1060 824 1587 849">(Association of College &amp; Research Libraries)</p> <p data-bbox="1060 898 1982 1247">“Notwithstanding any terms in the Publication Agreement to the contrary, AUTHOR and PUBLISHER agree that in addition to any rights under copyright retained by Author in the Publication Agreement, <b>Author retains:</b> <b>(i) the rights to reproduce, to distribute, to publicly perform, and to publicly display the Article in any medium for noncommercial purposes;</b> <b>(ii) the right to prepare derivative works from the Article; and</b> <b>(iii) the right to authorize others to make any non-commercial use of the Article so long as Author receives credit as author and the journal in which the Article has been published is cited as the source of first publication of the Article.”</b></p> <p data-bbox="1060 1255 1383 1279">(SPARC Author Addendum)</p>

## Other contract language examples (more specific)

<p style="text-align: center;"><b>Publisher-friendly language</b></p> <p>RIGHT OF FIRST REFUSAL          “The Author grants to the Publishers the <b>first refusal of (including the first opportunity to read and consider for publication) the Author's next work suitable for publication</b> in volume and/or electronic form, and the Author will not offer such work for publication to any other publisher until an offer made by the Publishers has been considered and declined. If terms for publication of the new work have not been agreed with the Publishers within three months of receipt by the Publishers, the Author will be free to enter into an agreement with any other publisher.”          (Routledge)</p> <p>COMPETING WORKS          “The Author agrees not to furnish to any other publisher during the continuance of this Agreement <b>any work of competing character on the same subject without written authorization</b> of the Publisher.”          (Illinois)</p>	<p style="text-align: center;"><b>Note to authors who see this contract language</b></p> <p>While you might want to work with this publisher again, it is not in your best interest to give up your right to select a different publisher for your next book, whether or not it is on the same topic.</p> <p>Look for a “Right of First Refusal” or “Competing Works” clauses in your contract – consider <del>striking</del> if you find them.</p>
<p style="text-align: center;"><b>Publisher-friendly language</b></p> <p>“The Author further agrees to <b>prepare an index</b> when the type has been set into final page form. If the Author does not prepare the index, does not deliver the index to the Publisher in a timely manner, or does not deliver a satisfactory index to the Publisher, <b>the Publisher may prepare or have prepared an index, the cost of which will be charged against the Author's future royalties</b>. The Author agrees to pay the cost of alterations in type or in plates required by the Author (other than those due to printer’s errors) in excess of 5% of the cost of composition.”          (Rowman &amp; Littlefield)</p>	<p style="text-align: center;"><b>Note to authors who see this contract language</b></p> <p>It is increasingly common for publishers to push some production costs to authors. This includes index creation, as well as obtaining permissions and paying copyright fees for copyrighted worked included in your own creation, if applicable (such as images).</p>

**Author-friendly language**

“ACKNOWLEDGMENT OF PRIOR LICENSE GRANTS.

Publisher acknowledges that Author’s assignment of copyright or Author’s grant of exclusive rights in the Publication Agreement is subject to **Author’s prior grant of a non-exclusive copyright license to Author’s employing institution** and/or to a funding entity that financially supported the research reflected in the Article....”

(SPARC Addendum)

**Note to authors who see this contract language**

This is important because it allows an author to deposit the work in our Open Access institutional repository, The Cupola, before it is submitted for consideration by a publisher. Please send the work to [cupola@gettysburg.edu](mailto:cupola@gettysburg.edu) so we can upload it.

**Other considerations for authors:**

- You may see differences between commercial and nonprofit publishers (such as university presses).
- A positive relationship with an editor does not necessarily predict an author-friendly contract with a publisher.
- Publishers sometimes offer royalties, free book copies, or purchase discounts to authors in exchange for the author’s copyright. Pay attention to royalty language – does it include royalties on print copies only, or does it include other revenue streams such as ebook sales, ebooks included in aggregated databases (such as ebrary), payments from the Copyright Clearance Center, etc.?
- Librarians are not lawyers and cannot provide legal advice. The examples here are common approaches we see authors using as they negotiate the often confusing terrain of publication contracts.

## Additional resources from Musselman Library and beyond:

- **Scholarly Communications services at Musselman Library** – we can help with author rights, increasing research visibility, Open Educational Resources, and publishing. Reach us at [cupola@gettysburg.edu](mailto:cupola@gettysburg.edu)  
<http://libguides.gettysburg.edu/scholcomm>
- **Copyright** – website under development with basic information about copyright in teaching and research, and a link to contact the library’s copyright committee for consultation  
<https://www.gettysburg.edu/library/copyright/>
- **Did I sign my rights away? Copyright for authors** – slides and notes from October 2014 presentation for faculty, by Janelle Wertzberger  
<http://cupola.gettysburg.edu/oaweeek/2014/oaschedule2014/4/>
- **SPARC (Scholarly Publishing and Academic Resources Coalition)** – a global coalition committed to making “open” the default for research and education – Musselman Library is an institutional member  
<https://sparcopen.org/>
- **Author Rights** – information for authors, including the SPARC Author Addendum, a free, legal instrument you can use to modify your contract  
<https://sparcopen.org/our-work/author-rights/>
- **Understanding the Difference Between a Transfer and a License** – from the Digital Media Law Project  
<http://www.dmlp.org/legal-guide/understanding-difference-between-transfer-and-license>