

Negotiating Your Copyright with Publishers*

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Introduction

In seeking to retain your copyright when submitting a manuscript for review and publication you are entering a negotiation.

First and foremost, understand that you are in control. Your manuscript is your intellectual property — you own it. The publisher is asking you to give up ownership of your intellectual property so that it can sell it or license it to 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.

Copyright is a group of rights over which an author has complete discretion; you can transfer all, some or components of them. **You do not need to transfer all your rights to the publisher.**

A successful negotiation with a publisher can be an easy process, and most of the time it will follow a similar pattern:

1. Once your article has been peer reviewed and accepted for publication, the publisher sends you a letter along with a legal document for you to sign (an “assignment of copyright” or “transfer of copyright”).
2. You contact the publisher and ask to retain certain rights. A discussion ensues, as you try to understand each other's needs and concerns.
3. You reach an acceptable agreement and the final draft is signed.

The next sections will deal with the steps in this process.

Before negotiations: prepare yourself

The most important step in any negotiation is preparation. To be successful:

- Know what you **need** and what you only **want**.
- Consider **what the publisher wants**.

What you need: This depends on what plans you have for your work after publication. These are “deal-breakers” for you. If a publisher won't agree to them, you will walk away.

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 in question as part of a derivative work or compilation. If a publisher is unwilling to make concessions, is the book more important than the separate publication of this single article? If so, then this is a true need.

What you want: This depends on potential uses for your work in the future.

Maybe you want to post your article to a departmental website or institutional repository to share with your colleagues. 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, but if the publisher will not agree, then you can concede the issue and move on.

What the publisher wants: Most publishers are in business to make money. Even those that exist to disseminate scholarly research must still pay for overhead. Know that the publisher may be concerned about its revenue stream.

For instance, if you wish to retain the right to include your article in a subject or institutional repository or to post to your website in order to share with your colleagues, a publisher may seek to limit these uses by imposing a long embargo period.

During negotiations: communicate and barter

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

Effective communication is the key to success. Sometimes it's easiest to pick up the phone and explain what you're interested in doing and then send a follow-up letter. Often, however, you will be dealing with email correspondence and will have to account for the limitations of this medium.

For instance, a short, direct email meant to save time can often be seen as terse, or even rude, by the recipient, and thus risks beginning negotiations on the wrong foot. More importantly, it risks failure because it does not allow for much information to pass to the recipient.

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

Ask for more than you need and don't tell the publisher which of your requests are deal-breakers and which aren't. During discussions, you can drop some requests in exchange for the publisher meeting others that are more important to you.

You can view negotiations as a bartering game. Publishers may expect you to ask for more than you will ultimately settle for, and will initially offer less than they will ultimately give you.

Of course, it is not necessary to drop a request entirely in order to come to agreement. If the publisher refuses a request, ask what concerns caused them to refuse you, and suggest that you work together on a solution that addresses the needs of both parties.

Closing the deal: get it in writing

- Make sure all agreements made are explicitly stated and understood before ending negotiations.
- Put the agreement in writing.

Once you feel an agreement has been reached, restate the terms generally and have the other party review them before you end discussions. It is easy to misunderstand what a party is offering or agreeing to, and to forget details during a discussion.

Once you have agreed explicitly to the terms, put them in writing. Copyright must be transferred in writing under the law, and promises made orally 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, and suggest that you simply sign their contract without getting these promises in writing. Don't fall for this — insist on a written confirmation that reflects your agreement.

Additional resources

- Information on the SPARC Canadian Author **Addendum** and other matters from the [Canadian Association of Research Libraries](#) (CARL).

Attach the [SPARC Canadian Author's Addendum to Publication Agreement](#) to your publishing agreement in order to secure a more balanced agreement by retaining select rights, such as the rights to reproduce, reuse and publicly present the articles you publish for non-commercial purposes.

- Coverage of [intellectual property issues and resources](#) from Canadian Association of University Teachers (CAUT)