Contracts, Copyright & Confusion

Making Sense of Your Book Publishing Contract

Lisa Quinn, Acquisitions Editor
Wilfrid Laurier University Press

Contract Basics

A contract is a legally binding agreement between two or more persons for a particular purpose.

For example:

- a person offers to give another person something (contract of sale)
- to provide a service (hire of services or lease of property)
- to refrain from doing something (non-competition)
- a mandate whereby a person gives another the power to represent them

A contract is a mechanism of economic exchange.

The primary exchange of the publishing contract concerns copyright.

…the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof…

Copyright Act (R.S.C., 1985, c. C-42) 3. (1)

The Copyright Clause: Examples

Subject to the terms of this Agreement, the Author hereby grants to the Press, the sole and exclusive copyright to produce and publish the Work titled…

The Author hereby grants and assigns to the Publisher and its international affiliates, subsidiaries and assignees worldwide, all rights, title and interest in and to the copyright in [her] book herein identified as the 'Work,' and the exclusive right to publish and license to publish the first and all subsequent editions in all forms and media in all languages throughout the world…

Moral Rights V. Copyright

The author of a work has the moral right to:

- be named as the author of the work as they choose
- the integrity of the work

- Authors cannot assign their moral rights to someone else but they can waive them
- Signing over copyright does not constitute waiving moral rights
- If an author waives their moral rights to the copyright holder, that party can enforce those rights in place of the author
- Moral rights subsist for the same term as the copyright in the work

Copyright Act (R.S.C., 1985, c. C-42) 14.1 & 14.2

Copyright Questions to Consider

- Who owns copyright? Transfer of copyright or exclusive license?
- What moral rights, if any, does the contract ask to be waived?
- Are there limitations on the assignment of rights?
- What terms of use are reserved by the author?
  - Can the author reproduce their material for publication in another work without permission of the publisher?
  - Can the author reproduce their material for teaching purposes without permission of the publisher? Exclusions and conditions?

Contract specifications

- Contracting parties
  - author/editors and the press
- Title
- Statement of authorship
- Formats
- Geographic jurisdiction
- Liability
- Conditions
  - Peer review
  - Editorial Board
  - Funding

Manuscript Submission

- Physical specifications of the manuscript
  - Hard copy and/or electronic copy
  - Length
  - Style
    - References
    - Grammar & spelling
  - Index
  - Allocation of costs for additional work

Third Party Materials

- Who is responsible for securing permissions to reproduce?
  - for use in publication—including scholarly publishing—fair dealing education exemption does not generally apply

- Images
  - required format: electronic file (.jpg, .tif, resolution) or print ready hard copy

Obligations to Publish, Sell & Publicize

Press

- to publish by agreed date
- control of design, production, format, price
- to publicize, provide gratis review copies
- to manage supply and distribution

Author

- to complete author marketing questionnaire
- to provide metadata on request
- to comply with marketing requests

Compensation

- Royalties
  - Factors in determining rate include
    - Scale of market for the work (course use, etc.)
    - Reputation of the author (authority and name recognition)
- Complimentary copies
- Author discount
- Relevant taxes (GST)

Other Rights

Electronic

- Limits on electronic forms
- Royalty rate

Subsidiary Rights

- Includes:
  - Translations
  - Book club or study editions
  - Anthology
  - Abridgement
  - Excerpts
  - Microfilm or fiche
- Royalty rate

Role of Access Copyright

- Royalties garnered through Access Copyright are for subsidiary rights (50% press/ 50% author) including
  - Copying for course packs
  - Library reserves
  - Incidental copying (classroom handouts, copying in the library, etc.)

- Economy of scale for publishers through management of subsidiary right of copying, including electronic access

- Fair dealing exemptions for education have not been clearly defined by current legislation
- Court challenges will be pending

Termination of Agreement

- Notice required by either party to terminate contract
- Option to purchase remaining copies of the work, and/ or files of the text (at cost of formatting, etc.)

- Terms on remaindering or out-of-print

Subventions & Grants

- Status of subventions and grants applied for in support of publication

- Obligation of author to apply for or provide a base subvention for the work
  - Market for the work is the major factor

Non-competition Clause

- Author agrees not to produce a competing work for another publisher without permission from the originary press
- May request right of first refusal on next book project

Dispute Resolution

- Acknowledgement of laws governing the agreement
  - Jurisdiction
  - Terms of arbitration
  - Terms of inheritance

Questions?

Lisa Quinn
Acquisitions Editor
Wilfrid Laurier UP
quinn@press.wlu.ca