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## 2I Negotiating Author Agreements

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# **NEGOTIATING AUTHOR AGREEMENTS**

**LAURA QUILTER**

**UMASS AMHERST LIBRARIES**

# BASICS

**You start by owning your copyright**

- as soon as it's "fixed ... in any tangible medium of expression"

**Your copyright gives you the right to control who**

- reproduces (copies)
- distributes
- makes derivative works (translations, abridgments, adaptations)
- public performances
- displays & digital transmissions of sound recordings. (17 USC 106)

**When you publish, you either**

- a) give permission ("license") to publish, or
- b) you transfer your copyright to the publisher.

**If you transfer your copyright, you become a legal stranger to your own work.**

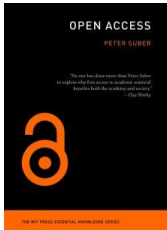
***You do not have rights over it any more.***

# “LICENSE” OR “TRANSFER”

Don't be confused by “license” language:

- “exclusive license” is the same as a transfer of copyright
- “non-exclusive license” means you keep your copyright

“Open access” and “Creative Commons” are examples of non-exclusive licenses.



Recommended reading: Peter Suber's *Open Access*  
free download available at <http://mitpress.mit.edu/books/open-access>

# WHY NEGOTIATE?

- Typical contract issues, like indemnifications
- Typical publishing contract issues, like credit, editing & revision rights, reversion of rights

## But most importantly:

Your career is made up of your publications; these are the most important asset you have, and you owe it to yourself to protect your rights to use your own work. *When you assign your copyright you effectively become a legal stranger to your own work.*

# LEGAL STRANGER TO YOUR OWN WORK

If you transfer your copyright, you become a legal stranger to your own work.  
*You do not have rights over it any more.\**


By law, you have to ask permission & possibly pay to:

- Reprint the article as a chapter
- Re-use a figure or illustration in a subsequent work
- Assign the paper to your students
- Share the work with your colleagues or on the job market
- Post the article on your website

\* Caveat: In 35 years you can terminate the assignment and become the owner again.

It's galling to have to ask permission or pay fees FOR your own work.

Figure reprint fees can be HUNDREDS of dollars. \$\$\$\$\$

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My number of figures/ tables/illustrations ...	<input type="text" value="4"/>
My format is...	<input type="text" value="both print and electronic"/>
I am the author of this Elsevier article...	<input type="text" value="Yes"/>
I will be translating...	<input type="text" value="No"/>

Total Price: \$TBD  
Update Price

# CAN I NEGOTIATE?

- **Yes! It's a contract. Just like buying a house, or a car, or hiring a contractor.**
- **You are already giving the publisher something very valuable – the right to make a profit off of your work. If you don't negotiate, you are not representing yourself well.**
- **Can't they reject me? Won't happen. Negotiation takes place AFTER peer review, when the publisher has already made a significant investment in the work: In fact, for articles, it's the vast majority of the investment; for books, there's more play, but the author still has the upper hand.**
  - *You can take it to another publisher if you don't get what you want.*



# HOW TO NEGOTIATE

- Write in and strike out
- Add addenda (such as the [SPARC Addendum](#))
- Go back & forth with editor / publisher – sometimes several times
- Have a campus Open Access Policy that eliminates the need for individual negotiation (at least for articles)

# Negotiate your author agreements

## Strike through or write in!

Like negotiating for cars or houses.

3.2 The Publishers will have the right to make any decisions they see fit concerning the production, design, publication, marketing, sales, distribution, licensing, promotion and pricing of the Work, including the number of copies printed, format, paper, printing, binding, jacket and cover design.

6 **Proofs and alterations.**  
Following acceptance by the Publishers of the Work, the Publishers will prepare and deliver proofs to the Author. The Author will read and correct the proofs of the Work and will promptly return them to the Publishers. If the Author fails to return the corrected proofs at the time agreed with the Publishers, the Publishers will consider the proofs as being approved by the Author for publication. Any alterations made by the Author in the proofs, or to the finished artwork (other than the correction of the Publishers' or printers' errors) may be charged to the Author or not paid for, at the discretion of the Publishers. The Publishers may request the Author to pay these charges before the Publishers, or they may be deducted from any payment specified in this Agreement.

7 **Free copies.**  
The Publishers will send to the Author immediately after first publication of the Work (i) 50 copies of the Work in the form in which it is published. If the Work is published in hardback and paperback simultaneously, the Author will receive 2 (two) hardbacks and 5 (five) paperback copies.

7.2 The Author will be entitled to purchase directly from the Publishers at the current author discount rate (which will be applied to the list price of the book at time of purchase), 50 copies of the Work, or where the Publishers so elect, to be supplied in the form the Author will also have the right to purchase other publications of the Publishers at current author discount rate for personal use only. The Author will pay the publisher in advance for any such orders, and except for orders sent by surface mail will address in the US will pay the postage costs.

7.3 The Publishers will also provide the Author with access to one copy of any printed or online version of the Work that they produce.

8 **Conflicting publications.**  
Subject to the provisions of Clause 3.3, the Author warrants that during the continuance of this Agreement no material written or published by the Author will be published which may reasonably be considered by the Publishers to directly compete with or tend to lessen the sale of the Work of the Publishing Publisher, unless the Author has written and the Publishers

in its possession.

1.3 **The Author will:**

(i) be responsible for obtaining and paying for any third party permissions for the use of copyright material to be used in the Work, and will deliver to the Publishers, with the typescript, a complete list of materials taken from other sources together with any relevant permissions;

(ii) retain a duplicate copy of the Work, the illustrations and all other material submitted to the Publishers; and

(iii) by no later than the time that page proofs are approved for publication as described in Clause 6, complete a index for the Work, of a length and nature acceptable to the Publishers. Should the Author be unable or unwilling to complete an index the Publishers may arrange for its completion and the cost will be charged to the Author and/or deducted from any payments due to the Author under Clause 9 or 10.

**Alterations by the Publishers.**

2. If the Publishers decide not to publish the Work, they will give the Author three months in which to make alterations to the Work, or to accept a contract for publication. If the Author fails to do so, the Publishers' reasons for not publishing the Work, and may be discussed when the Agreement is terminated.

2.2 The reasons why the Publishers may decide not to publish the Work may include any of the following:

(i) The Author fails to deliver any item mentioned in Clause 1.2 by the Due Date, in which case the Publishers may decline to publish the Work, and have the right to demand the return of any royalty advance which has been paid under the terms of this Agreement and/or set off an amount against the royalties or other income mentioned in the Agreement and/or to sue for damages;

(ii) The Work is delivered, but does not conform to the scope or content of the specifications agreed, or to the schedule provided, that might reasonably be expected. In this event the Publishers may have the right to request the Author to make revisions to the Work. If the Publishers consider that such revisions are unfeasible by firm and certain, or the Author is unwilling to make such revisions, then the Publishers may terminate the contract with written notice.

15. **Copyright infringement.**  
If the Author infringes the copyright in the Work or has infringed or may be infringing it, the Author shall be liable to the Publishers for any damages or losses sustained by the Publishers as a result of such infringement. The Author shall indemnify the Publishers for any damages or losses sustained by the Publishers as a result of such infringement. The Author shall indemnify the Publishers for any damages or losses sustained by the Publishers as a result of such infringement.

15.1 **Indemnification.**  
The Author shall indemnify the Publishers for any damages or losses sustained by the Publishers as a result of such infringement. The Author shall indemnify the Publishers for any damages or losses sustained by the Publishers as a result of such infringement.

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15.5 **Indemnification.**  
The Author shall indemnify the Publishers for any damages or losses sustained by the Publishers as a result of such infringement. The Author shall indemnify the Publishers for any damages or losses sustained by the Publishers as a result of such infringement.

18.3 On any further revised editions of the Work after that specified in Clause 18.2 the Author's representatives will not be paid.

19 **Reversion of Rights.**  
When, in the sole judgment of the Publishers, the original or the Work is an insufficiently successful commercial venture, the Publishers may, at any time, terminate this Agreement and the Work may be returned to the Author. The Publishers shall be entitled to publish the Work available for publication in at least one English language edition, in any format, including electronic, and all rights in the Work shall revert to the Author. The Author shall be responsible for the cost of reproduction of the Work and the Author shall be responsible for the cost of reproduction of the Work and the Author shall be responsible for the cost of reproduction of the Work.

20 **Termination.**  
Should the Publishers by themselves or anyone acting on their behalf fail to fulfil or comply with any of the conditions accepted by them in this Agreement within 60 days of receipt of written notice from the Author of their failure, or should the Publishers go into liquidation (other than voluntary liquidation for the purpose of reconstruction only), or have a Receiver appointed of the Publishers' business then all rights will revert to the Author and the Agreement will terminate automatically.

20.2 If the Agreement is terminated under Clause 19 or 20.1, all rights will revert to the Author with the exception of:

(i) any rights previously entered into by the Publishers; and

(ii) the right of the Publishers to continue to sell any copies they are in stock at the date the contract is terminated and hence any existing subscription, access or licensing arrangements already entered into.

21 **Notice Agreement.**  
This Agreement constitutes the entire and sole Agreement between the parties with respect to whether written or oral. No addition to or variation of any provisions of this Agreement (except as mentioned in clause 20) shall be binding upon the parties unless it is in writing and signed on behalf of the Author and the Publishers.

22 **Arbitration.**  
If any difference arises between the Author and the Publishers concerning the meaning of this Agreement or the rights and liabilities of the parties, it will on the first instance be referred to the International Disputes Settlement Board of the Publishers Association, and failing Agreement under the Scheme, will be referred to the arbitration of two persons (one to be named by each party) or their mutually agreed successor in accordance with the provisions of Schedule A to the Arbitration Act 1996, as amended or substituted statute for the time being in force.

23 **Assignment.**  
The Author may not assign, sub-license, sub-contract or otherwise transfer his/her rights or obligations under this Agreement without the prior written consent of the Publisher.

may be requested by the Publishers as a result of such review, have been made by the Author and accepted by the Publishers in writing.

3 **Copyright**

3.1 The copyright in the Work will remain the property of the Author. The copyright notice to be printed in the Work will be in the name of Anna Strowe with year of first publication.

3.2 (a) In consideration of the payment to the Author of the fee and/or applicable royalty percentages of the Publishers' receipts set out in Clause 9, the Author grants to the Publishers the sole and exclusive right and license to produce and publish, and to license others to produce and publish, the Work ~~in any abridgement, adaptation or translation of the Work, or in any other form, and in all languages throughout the world for the full term of copyright, (including all renewals and extensions of that term).~~

(b) The rights granted to the Publishers in this Agreement, shall include but not be limited to:

(i) the rights specified in Clauses 9 and 10; and

(ii) the sole and exclusive right to edit, adapt, produce, publish, disseminate, enrich or otherwise make available and to license others to produce, publish, disseminate, enrich or otherwise make available the Work or any part of the Work in any digital, online or electronic form now known or later invented, in all languages throughout the world for the full term of copyright (including all renewals and extensions of that term) and the right to renew and extend such right.

3.3 The Author may use no more than 10% of material from the Work in academic or professional journals, and for the Author's professional purposes, provided that he/she informs the Publishers in advance, and acknowledges the Work and the Publishers.

3.4 The Author asserts to the Publishers their moral right to be identified as the Author of the Work in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

3.5 The Publishers undertake to place the following notice with due prominence in every copy of the Work published by them in the United Kingdom:

*+ subject to the approval of the Author.*

*to appear by the author*

*using 10% or one chapter*

*An additional...*

*not relevant anymore*

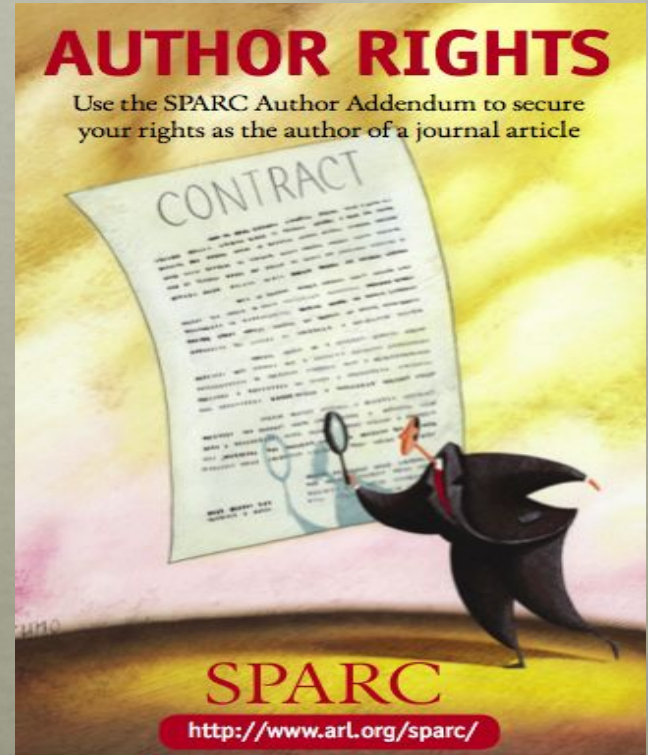
# Negotiate your author agreements

... OR

Use the SPARC author's addendum  
with all the rights that authors  
need

DISTRIBUTION and REUSE

<http://www.sparc.arl.org/resources/authors/addendum>



# ANATOMY OF A CONTRACT

- **Representations & Warranties**  
Promises or guarantees the author makes regarding, typically, content of work. Often tied to indemnification. *Strike-through or modify.*
- **Conflicts of Interest, Funding, Data Management**  
Commitments to uphold integrity of scholarship & journal's reputation. *Modify as needed.*
- **Rights Granted, Copyright, Assignment of Publishing Rights, etc.**  
Specifies transfer of rights from author to publisher, and any rights re-granted back by publisher to author. *Strike through and insert modified language.*
- **Delivery of Work, Royalties, Prize Money, etc.**  
Allocates responsibilities & rights. *Look for fill-in-the-blank opportunities to negotiate; strike-through & modify.*
- **Choice of Law, Forum, Merger, other legal “magic” language.**  
*Publishers may be much less willing to negotiate.*

# GENERAL CLAUSES

- **Indemnification: Agreeing to pay someone else's legal expenses. Often tied to "warranties" – your promises or guarantees. Be sure these are not too broad!**
- **Choice of law; choice of forum; arbitration; mediation**
- **Merger clause: Means that only what's in the contract itself is relevant. Any side agreements in email between you and editor are not included, and are not legally enforceable!**

# **PUBLISHING CLAUSES (1 of 2)**

- **Term & territory / geographic scope**
- **Royalty & subsidiary rates & accounting.**
  - Ebook royalties often quite different
- **Exclusive and subsidiary rights (book club, etc.)**
- **Timetable for manuscript delivery**
- **Manuscript acceptance & criteria**
- **Changes in manuscript: Can you reject? Who has final say?**
- **Promotion: What are their commitments?**
- **Responsibility for included third-party materials**

# **PUBLISHING CLAUSES (2 of 2)**

- **Defensive litigation: Indemnification, control over suit**
- **Offensive litigation: Authorization to sue, control over suit**
- **Revisions & future editions**
- **Remaindering copies**
- **Publisher bankruptcy**

# TRICKY PUBLISHING CLAUSES

- **Attribution / “Moral Rights” (UK) – US law does not mandate attribution, so you want this. Especially likely if you’re writing a contribution to a collective work, like a textbook, encyclopedia, handbook, etc.**
- **Title & edits**
- **Derivative works – translations**
- **Rights to reprint the piece or excerpts**
- **Competing works : Be VERY careful about this.**
- **Books: “out of print” reversion rights & electronic prints**
- **Rights to sue**
- **Right of 1st refusal**



# THE RIGHTS YOU NEED

Many of these rights are now “given back” to the author in publisher contracts, but you still need to scrutinize to ensure they are *sufficiently* given back.

# NOT A PRO FORMA EXERCISE

This is NOT a *pro forma* exercise. Publishers, like Oxford University Press, Cambridge University Press, Taylor & Francis, Sage -- are suing universities for library reserves and course management systems.

- Georgia State University, sued by Cambridge University Press, Oxford University Press, & Sage, for reserves / faculty course management systems. *Ongoing*.
- Also filed in last 5 years: UCLA; Delhi University; York University (Canada); Haifa University (Israel); New Zealand.

# PUBLISHING FEES

**Fees: Page charges, manuscript review, open access fees, etc.**

- **Ensure ethical journal practices (The [OASPA](#) offers this service for open access journals.)**
- **Possible rebates or discounts**
- **Funder & campus publishing support (open access publishing funds; subvention funds from Chairs, Deans, Provosts, etc.)**

# OTHER ISSUES

- **Do not EVER sign away copyright or other legal rights at time of submission.**
- **Co-Authors: In copyright, these are “joint authors”, and they hold full and equal share of the work. They have to account for profits, but don’t have to get co-author permission to give permission for non-exclusive uses. Be mindful of the legal aspects of authorship!**
- **Proposals & Protecting Ideas: Copyright Versus Ethics**
- **Open Access Terms: CC-BY, CC-BY-NC, CC-BY-ND**

# OTHER ISSUES

- **Funder mandates**
- **Data management requirements: Common to journals & to funders, but know in advance if applicable**
- **Copyright & trademark permissions: If you use 3<sup>rd</sup> party content (quotes, images, screenshots) you will likely have to deal with documenting – and paying for if necessary – copyright. Make sure you know, in advance, if the publisher is willing to accept fair use or other reasonable legal arguments you might make about uses of content in your work.**
- **STM Licensing Agreement**  
<http://www.stm-assoc.org/copyright-legal-affairs/licensing/>

# OTHER ROLES

- **Work Made for Hire:** You may not legally be the “author” if the work is “made for hire”. Check your employment contracts, especially for online teaching, contractual or commissioned work, general news or magazine pieces, etc.
- Editor of a book
- Starting a journal: Editor, Publisher, Etc.
  - Coalition of Publishing Ethics [publicationethics.org](http://publicationethics.org)

# TRICKY PROBLEMS

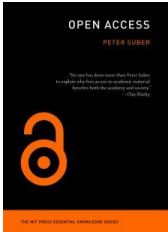
- **“Click to Assign” -- on submission**
- **Your research is a work-made-for-hire**
- **Pro Tip: Treat your graphics as separate copyrightable works, and license them to yourself or use a CC -- so you can re-use. (This is a shortcut to negotiating.)**

# OPPORTUNITIES FOR LIBRARIANS

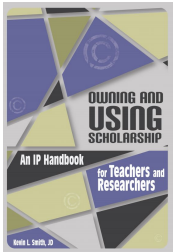
- **Connect the publication and assignment to journal prices**
- **Connect their roles as editors and make faculty aware of their power in their roles as editors**
- **Promote campus open access policies as a *RIGHTS RETENTION* solution to help faculty**
- **Negotiating is not that hard! Show them marked-up copies with strike-outs and inserts.**
- **Why negotiate? Remind them about houses and their scholarly career output. Tell them about having to ask for permission to re-use *their own work*.**



# RECOMMENDED READING



Peter Suber's *Open Access*  
free download available at <http://mitpress.mit.edu/books/open-access>



Kevin Smith's *Owning and Using Scholarship*  
Free download at [http://www.ala.org/acrl/sites/ala.org/acrl/files/content/publications/booksanddigitalresources/digital/9780838987483\\_copyright\\_OA.pdf](http://www.ala.org/acrl/sites/ala.org/acrl/files/content/publications/booksanddigitalresources/digital/9780838987483_copyright_OA.pdf)

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# credits / contact

Laura Quilter

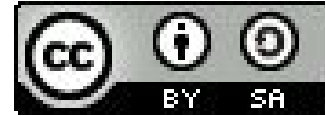
[lquilter@library.umass.edu](mailto:lquilter@library.umass.edu)

*thanks to:*

Charlotte Roh

[charlotteroh@library.umass.edu](mailto:charlotteroh@library.umass.edu)

for helping with layout, ideas, etc.



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