

## 1: Guidelines for Publishing Agreements and for Protecting IP

*Note: Citations are based on reference standards. However, formatting rules can vary widely between applications and fields of interest or study. The specific requirements or preferences of your reviewing publisher, classroom teacher, institution or organization should be applied.*

Saturday, February 26, Distinguishing the Good, the Bad, and the Ugly in Publishing Agreements What are some of the best online and ink-on-paper resources regarding publishing agreements? But, first, here is a bit of general advice on how such resources should be used. Publishing agreements are often long and complicated legal documents. Some are also filled with traps for the unwary. These can be treacherous waters, and you need a guide. Authors often wonder whether, in seeking advice, they should consult a literary agent, a literary property attorney, a book on publishing law, or simply a friend who has signed such an agreement before. All can be helpful in somewhat different ways. If you already have an agent, she would be your first and likely best source of information. A good agent knows the ins and outs of the documents such as standard book publishing agreements that she deals with on a daily basis and -- crucially -- has an informed view about what a literary work may be worth in the marketplace. But, for a beginning writer, finding a good agent can sometimes be almost as difficult as finding a publisher. Agents and lawyers have different areas of expertise. Like an agent, an experienced literary property lawyer can explain your rights and duties under the terms of a publishing agreement and point out all of the ways in which you are being taken advantage of. But a literary property lawyer may not have any idea how much money your work could reasonably command, and he may not be much use at all in placing it for you. On the other hand, a literary property lawyer may be especially helpful in a deal that is somewhat out of the ordinary. Consequently, an agent may sometimes enlist the services of a literary property attorney, on an "as needed" basis. Keep in mind that a lawyer who does not regularly do intellectual property work may not be cost-effective. Sometimes an author is presented with a publishing deal that 1 he has obtained without the assistance of an agent, and 2 he knows to be a fair financial deal. An example might be a proposed contract from a university press for an academic work, where there is no reasonable prospect for a large advance or meaningful royalties. In that case, it might make sense to consult a lawyer without pulling an agent into the deal. Of course, if you have access to an agent, it never hurts to ask whether she would be willing to review your contract for a reasonable flat fee. Particularly if money is tight, you may want to explore alternative sources of personalized advice on publishing agreements. The National Writers Union provides a similar service. A friend who has experience with publishing agreements can sometimes provide good advice. He will certainly have your best interests at heart, and depending on the friend may have valuable insights. But a little knowledge is a dangerous thing, and so. Even if you have an agent or a lawyer or a well-informed friend, you should educate yourself about the legal and business terms of publishing agreements. There are several online and off-line resources that provide a good place to start. You may find it useful to compare the key clauses posted on this site with the corresponding clauses in any contract you are offered. It can be illuminating. There are several practicing lawyers who have posted on their websites useful resource materials concerning publishing agreements. Non-lawyers will actually find it quite readable. So, here is what I would recommend you do before signing your first publishing agreement. First take a look at the online resources. Then buy or borrow and read the relevant sections of at least one of the law and publishing books. If you have access to an agent, she should be your first resort for personalized advice. But keep a sense of proportion about it all. What if, for example, you are presented with a proposed agreement for a one-off magazine article that you have only spent a few days writing and that will generate a fee of only a few hundred dollars? It would be great to have your agent glance through it, if you have one. It would be great to have your cousin, the intellectual property lawyer, take a look at it for free.

## 2: Publishing Contracts (Protect Your Work) | [www.enganchecubano.com](http://www.enganchecubano.com)

*Drafting Print & Online Publishing Agreements, by intellectual property attorney Roy S. Kaufman and published by Aspen Law & Publishing offers guidance for publishers and attorneys facing a new era of legal issues in publishing. It includes more than current forms that can be used as a starting.*

Some general tips on working with model forms. Many lawyers spend the bulk of their time drafting legal documents such as motions and pleadings, estate planning documents, corporate agreements and contracts. We get many questions from attorneys and summer associates who need assistance finding a template document or model form to use in drafting legal documents for a client. To assist lawyers in this aspect of their practice, publishers have created a wide range of drafting aids that contain sample litigation and transactional documents. These sample documents or model forms often include helpful background, commentary, jurisdictional pointers, alternative provisions and drafting tips. But, when no such document exists, lawyers must look elsewhere. The two most common formats are multi-volume encyclopedic form sets and subject-based treatises containing forms. Practitioner material, like continuing legal education materials, may also contain model documents. The good news for students is that Lexis and Westlaw extract forms from the sources they aggregate and then organize these forms by practice area and jurisdiction so they are easy to search and compare. Bloomberg has a slightly different organizational system, as is explained below, but it is also an excellent place to search for forms, especially transactional forms. Sample documents can also be located by searching publicly-available court and agency filings. Some of these filing systems are better than others. There are three main ways to locate forms on Lexis Advance i. You can run a word search here or continue to narrow your search by choosing a jurisdiction or practice area and then run your search. Once you have a set of results, you will be able to filter those as well. This tool contains a wealth of sample forms aimed at practitioners. Alternatively, you could search the forms index located in the center column of the main Practice Advisor page. Once you choose the practice area you are interested in, you can scroll down past secondary sources and choose forms. You will be directed to an advance search screen for locating forms. When it comes to searching for forms, Lexis Advance and Westlaw are organized much the same way. One difference is that Westlaw may have more litigation-related template forms than either Lexis Advance or Bloomberg. This is an index to the forms available on Westlaw sorted by jurisdiction and practice area. It is aimed at practitioners. It is located via a link on the right side of the home page. You can locate content by practice area, resource type, or jurisdiction. Among the resource types for each practice area are standard documents and standard clauses. One other place to look for transactional documents on Westlaw is the Sample Agreements link located on the right-hand column under Browse All Content. These are searchable and are organized by topic. Bloomberg is most helpful for transactional practice, though Litigation Practice Portfolios have good examples of a variety of different litigation documents including pleadings, discovery, and settlement agreements. Transactional Resources, under the Law School Success tab, is one of the two best places to find sample forms on Bloomberg. Here you will find links to a variety of different template forms under the Practical Guidance link for each of the four main corporate practice areas listed. In addition, there is a link to additional standard forms and filings on the right-hand side. DealMaker, under the Getting Started tab, has a library of more than , legal documents and millions of clauses that were used by top practitioners in real transactions. These are searchable in a number of ways. The truth is that the contents of the commercial sources varies greatly when it comes to form documents for Illinois clients. It is important to know the strengths and weaknesses of each of the commercial services. The titles and form sets mentioned here are also available in print at the LUC Law Library, if you do not have access to them online. Until recently, Westlaw had a marked advantage when it came to model litigation forms. The forms from these print sets are now available from Westlaw. The Illinois Practice Series is a series of nearly 20 treatises on different aspects of Illinois law written by local experts. Many of these texts contain forms. Illinois Civil Practice Forms: Illinois Civil Practice Forms has thousands of court-proven practice forms to cover every possible fact situation in a civil proceeding. Nichols Illinois Civil Practice with Forms: Based on a volume treatise on Illinois Civil

Practice. Illinois Forms Legal and Business: This set contains 20 chapters on all aspects of Illinois personal injury practice from opening the case to appeals. LexisNexis recently markedly improved its collection of Illinois-specific template forms with the addition of IICLE handbooks see description below to its Illinois Library. It does not appear, as of this writing, that forms from IICLE publications have been integrated into the Illinois forms database. Here are a couple of the most popular resources. State-by-state guide to business, wills and trusts, commercial, real estate and personal transactions. Sections include discussions of current business practices, tips for drafting and reviewing documents, a procedural guide and a rich collection of forms for each state. IICLE handbooks are written by Illinois practitioners and provide practical discussions of Illinois legal issues with citations to relevant primary authorities and many sample forms. The Law Library retains and updates all print volumes which are identifiable by their black binders. Secondary sources on Bloomberg Law are organized by practice area rather than jurisdiction so it is organized differently than Lexis Advance or Westlaw. One way to take advantage of the power and organization of Bloomberg Law for transactional documents is to go to DealMaker documents or clauses under the Getting Started tab and restrict your search to documents whose governing law is Illinois. This text, authored by a retired Illinois jurist offers step-by-step procedures, practice-proven strategies, and dozens of digital forms to assist practitioners with preparing pleadings, motions and discovery. When working with model forms, it is generally better to focus on forms specific to your jurisdiction, but if you are not finding what you need, look for forms from elsewhere. This is especially true if your state has specific legal requirements that must be complied with. It is important to understand the context when working with forms. Check the Table of Contents link to see what similar related forms or clauses are available. Remember that model forms are just a starting point. You always need to tailor forms to fit your own factual situation. Also, always make sure model forms reflect the most current laws for your jurisdiction. Be wary of using free forms available on the Internet. Legal information is often free for a reason; it may lack credibility, authenticity, or timeliness.

### 3: Rights of Writers: Distinguishing the Good, the Bad, and the Ugly in Publishing Agreements

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Frank Baum is that a girl, Dorothy Gale, gets transported by a cyclone to a magical world and must find her way home again. In keeping with the above example, the plot diagram for *The Wonderful Wizard of Oz* would look like this: Dorothy wakes in the Land of Oz. To find her way home again, she must make a journey to the Emerald City. She and her friends are chased by the Wicked Witch of the West, whom they eventually confront and kill. Dorothy and her friends meet the Wizard, and the Wizard shows Dorothy the way home. Dorothy awakens back in Kansas, glad to be home again. The plot diagram or outline can be as simple or detailed as you like, with extra details filled in as you work them out. Above all, remain flexible in these early stages. Each day, create a new version of the manuscript with the current date in its name. During the editing process, make a separate folder for any material that comes back from your editor, using a similar naming convention as above i. This will allow you to look back at and even take material from previous versions as you revise. We have one final note: When the time comes for actual writing, turn off any distractions: You might even want to do your actual writing on a pad of paper, then come back to the computer later to type it in and even edit as you do so. With more than twelve years of experience in the writing and editing industry, I accomplish that goal through a passion for brainstorming, researching, planning, writing, and editing everything from grants to novels to marketing materials to websites. My articles, interviews, poems, essays, and reviews have appeared in various print and online publications, including *Calyx Journal*, *Inkwell Magazine*, *Mindful Homeschooler*, and *Home Education Magazine*. View all articles by Angela Wade Stephanie Stringham As a child, I read everything I could get my hands on, and I dreamed of getting paid to read books and of helping people. After graduation, I stayed on with the publishing company, where I fell in love with book publishing. Editing is my avocation. I feel my calling as an editor is not only to improve text but also to teach those with whom I work so they can constantly improve their writing.

## 4: The Art of Drafting the Commercial Contract (Print + ProView online)

*Drafting Print and Online Publishing Agreements offer forms that can be easily downloaded from the companion CD so you can instantly generate customized forms for trade, college, and professional books, including: nondisclosure agreements - artwork agreements - work for hire agreements - copyright transfer agreements - advertising.*

Here is the text of a talk I will give to the Cornell Entrepreneur Network on November 17 on how authors can protect their intellectual property. This post is long and ignores conventional wisdom that blog readers stop reading after 1, words. But you may find some useful tips here. Included below is a discussion of the 8 key clauses you need to understand in your publishing agreement, suggestions about how to monitor your work to avoid infringement and a discussion of when your work will be infringed. At the end of this post is a link to the PowerPoint that will illustrate this talk. With that into here is the talk: Ideas are not protectible only their expression can be protected. If you started to roll your eyes when I said this you are not alone. Understanding the distinction between an idea and its expression is not easy The case of Rogers v Koons helps explain the distinction. In Rogers the photographer, Art Rogers, created a wonderful photo of eight puppies sitting on a bench. The Second Circuit Court of Appeals found that Koons copied not simply the idea of the puppies photo but its expression, stating: We recognize that ideas, concepts, and the like found in the common domain are the inheritance of everyone. What is protected is the original or unique way that an author expresses those ideas, concepts, principles or processes. That case was settled by Mr. Koons after he was unable to get the Supreme Court to review the 2d Circuit decision. Kudos to my colleague at the firm, Donald Prutzman for skillfully handling it on behalf of the plaintiff. In that genre, unprotected ideas include indispensable, standard or naturally occurring elements in the treatment of a given topic. What are some examples of unprotected standard or naturally occurring events? Time Life Films case presents some useful examples. Walker sued Time Life claiming that the film copied the creative elements of his book. It stated that the elements in both the book and the film, such as drunks, prostitutes, vermin and derelict cars, would appear in any realistic work about the work of policemen in the South Bronx. Because these elements are commonplace and inevitable, the court said they were unprotectible. The court added that only if these elements are given unique expression will they be protectible. These cases where one author claims that another has appropriated his or her work are common and in most cases turn out badly for the plaintiff. There are two reasons. First good defense counsel is often able to show that what the plaintiff claims is unique is really commonplace in a work of this type. So my advice to authors who believe they have been infringed is to understand the road ahead to a litigation victory will not be easy. Forms of Copyrighted Expression So what forms of copyrightable expressions are protected? Protected works include music, books, magazines, photographs, movies, paintings, sculptures, phonograph records and choreography, Originality means independent creation, not novelty. Courts will protect your work even though it is only slightly different from an earlier work so long as it reflect some minimal level of creativity C. When a Work Is Protected A work is protected by copyright as soon as it is fixed in a tangible medium for more than a few seconds. I begin with your publishing contract and will focus on 8 key provisions in that agreement. Grant of Rights from You to the Publisher The grant of rights you give to your publisher is probably the most important provision in your agreement. Here is the context in which you will exercise that grant. You own the copyright to your manuscript and you should always retain that copyright. Your copyright consists of a bundle of rights. You can give the publisher some or all of those rights. Most publishers will insist on having exclusive US print and electronic or e-book rights for at least for a reasonable period of time. All other rights are negotiable. Your decision which rights to keep and which to transfer to your publisher is an economic one. You need to ask yourself, if I retain certain rights, can I exploit them. For example, there may be no reason for you to keep foreign rights if you have no existing foreign publishing relationships. It provides that your publisher may use your work in all media now known or later developed. But that clause has a long tail and will allow the publisher to include your work in whatever new digital products Silicon Valley creates for years to come. You can parcel these rights out to different entities but you may confuse consumers if they have to buy the audio of your play from one vendor and the video of

the play from another. And because you will retain the copyright to your work, once your publishing agreement ends or you terminate it, you will be free to enter into any other agreement with any other publisher you wish. The term of copyright is long: That period will most likely be longer than the book will ever be in print. Therefore you may want to negotiate a much shorter term; maybe one that automatically renews but that you can terminate after a few years of sales when the publisher has had a chance to recoup its investment.

**Publication Date** The date should also be spelled out. You should set a time limit for publication so that your publisher does not let your book sit on its shelf unpublished. The clause should read something like this: E-book royalties are higher than print because e-book publishing costs are so much lower. There are, for example, no delivery or storage costs associated with e-books. Because of the fluidity of the e-book marketplace, you may want to reserve the right to renegotiate your e-book royalty every few years.

**The Advance** Advances, especially for a 1st time author are much harder to obtain these days. If you are fortunate to negotiate one, your publisher will recoup the advance first from your royalty stream before you receive your 1st royalty check. The advance depends on several factors, including the size of the publisher, the market for the book and the track record of the author. It is usually paid in three installments, the 1st on signing the agreement, the second when you submit your rough draft and the balance when your publisher publishes your manuscript. But predicting a fair use outcome is not for the faint of heart. That is because fair use is highly fact-specific and context-dependent. Here is an example of a fair use parody drawn from the case of *Mattel v. Forsythe*. He created some photos called *Food Chain Barbie* to criticize the objectification of women. His photos show the dolls in imaginative and often sexualized positions. Mattel lost, the court finding his photos fair use parody. Mattel was then ordered to pay Mr. I talked with him; he proudly told me he was paid. You will also want a warrant in your agreement that your work does not infringe the trademark rights of another; that it does not violate the privacy rights or publicity rights of others and that it is not defamatory. If your book harms their reputation, they have the right to sue you for defamation. The indemnities clause means that, should someone claim that your work infringes their rights, is defamatory or injures them in any way, you will be responsible for paying whatever damages are assessed and legal fees incurred. The damages and fees could be substantial.

First, you should place a copyright notice on all your works. That notice consists of 3 elements: The notice is like the nameplate on the door of your house or apartment; the copyright notice tells the world that this property is yours and prevents an infringer from later claiming it copied your work innocently. Second, you should register your work with the Copyright Office. Registration gives you the right to increased or what are called statutory damages if your work has been infringed. That right can be a powerful negotiation club when dealing with an infringer and can help lead to a quick settlement. But you have to register your copyrighted work either before it was infringed or, if infringed, within 3 months from the 1st publication of your work. Third you may be able to enlist your publisher to sue infringers as John Wiley has recently done when it sued some 27 Bit Torrent users last month. Bit Torrent is a peer-to-peer communications protocol for file sharing that is a favorite of infringers.

**Suggestions for Monitoring Your Work to Avoid Infringement** You also need to monitor your work to insure that it has not been infringed. With new social media sites created nearly every week, monitoring your work is difficult if not impossible. But here are some suggestions. There are certain sites that welcome pirated material. Aptly named Pirate Bay is one. You need to visit those sites periodically to ensure they do not contain your works. Next you may want to create a Google alert for all your book titles so that you are notified whenever one of your titles appears on a site where it does not belong. In addition, you may also want to take advantage of the terms of service that each site offers. The home page of most sites contains links to those terms that almost no one ever reads. So use the online forms those sites provide to notify them if an infringing copy of your book appears on that site. See for instance [http:](http://) Further, create a form take down notice that you can send to any Internet Service Providers like YouTube or Amazon that is hosting an infringing copy of your work. The ISP who receives that notice is required to expeditiously take down your work. But there is one more consideration to be aware of in the digital world we now live in. We are all publishers; we can reach a global audience with a character tweet. So you may want to pick your fights. If you are seen as overreacting in response to infringement, others could use the power of the Internet to turn the attack against you as a former Congressman from NY recently experienced. And once an attack goes viral

it is almost impossible to stop it. Dealing with E-book Piracy E-book publishing is soaring. In , publishers reported that 8. It is quite possible that e-book sales will overtake print sales in a few years.

## 5: Drafting and Editing Your Book - Next Steps In The Writing Process

*The book also contains negotiation tips and "insiders" views on many commonly encountered publishing contracts. Lastly, the book incorporates practice materials, such as libel review guidelines, information about industry initiatives, and select primary source documents to facilitate research.*

Jassin Drafting and negotiating contracts is viewed by some publishers as wasteful and time consuming. Many authors will simply sign them. Sometimes, lacking the necessary business acumen, a start-up publisher may delete important provisions that they do not fully understand. While it is difficult to see how your publishing agreement will play out in the long term, the decisions you make today could have profound, long term consequences. To illustrate, take the successful craft publisher who battled for recognition and profitability for twenty years. As he approaches his mids, with no children to take over the business, he decides to sell his publishing company to outsiders. Simply stated, the non-assignment clause prevents him from selling the assets of his company e. If you are thinking about selling a publishing company -- or spinning off a line of books -- take the time now to take care of any unresolved legal problems. A well drafted publishing agreement can add value to a publishing company. Taking the boilerplate provisions for granted can also have serious consequences for authors. While no publisher will strike its non-compete clause completely, if asked properly, most will offer the author a more palatable version. Book contracts typically give the publisher not the author the right to determine the title of the work. The key to a good contract is clarity. Ambiguity and inconsistency are the two key ingredients in litigation soup. Formal agreements are essential. Under copyright law, without a written agreement signed by the author, the publisher does not control exclusive rights. If a dispute arises, a well-drafted contract will anticipate such a dispute and could save you thousands of dollars in legal fees later on. Keep in mind that you are negotiating a very long term relationship. If the book is successful, the publisher and author or authors heirs could be bound together for the life of the copyright. For works published after , copyright lasts for life of the author plus another seventy years. A publisher must shore up any weaknesses in a publishing contract. For example, tighten up the contract to ensure it contemplates new technologies. For authors, it is helpful to keep in mind that most contracts are not take-it-or-leave-it propositions. Knowing what to ask for is critical. Use an agent or attorney who understands the parameters of the typical publishing deal to negotiate your contract. Working through an agent or attorney allows the author to preserve his creative relationship with the editor or publishing house. Below are issues to consider when you draft or negotiate your next publishing agreement. Each key point deserves greater attention than given here and, will be the subject of future articles. While not all clauses are equally important or negotiable , a well-drafted contract will cover all, or most of the points outlined below.

## 6: Improving Your Book Contract - The Authors Guild

*1 Drafting a Fair Book Publishing Contract By William R. Newman The internet age has brought about the advent of major changes in the publishing.*

## 7: Wildy & Sons Ltd â€™ The Worldâ€™s Legal Bookshop : Drafting Commercial Agreements

*Drafting Contracts to be published in print! 3 May / in Boek, Weagree, Weblog / by Weagree We are very proud to announce the publication of the book Drafting Contracts - Techniques, best practice rules and recommendations related to contract drafting.*

## 8: Publishing Agreements | Download eBook PDF/EPUB

*Most publishers will insist on having exclusive US print and electronic or e-book rights for at least for a reasonable period of time. All other rights are negotiable. Your other rights include foreign, paperback, book club, web, film, reprint,*

*audio, video, drama, rental, pay-per-view and derivative.*

### 9: Drafting License Agreements, Fourth Edition | Wolters Kluwer Legal & Regulatory

*Drafting LLC and Partnership Operating Agreements [Bloomberg Law] This link opens in a new window "[P]rovides industry-specific pattern operating agreements, drafting advice, issue-spotters, questions to ask clients, and management issues to resolve."*

*Immigrant Son II Refusing to Grow Up (Immigrant Son Series) Of men and monsters jeffery dahmer Combined-Cycle Installations 271 Johnson of the Mohawks Testing and evaluating physical fitness Will kindle files Raft foundation design and analysis with a practical approach What does Kay want? Skip Hollandsworth Brief history of architecture Process your thoughts Regularity in semantic change Marketing of the president Web 2.0 applications The American Geisha Chard Walkers Cajon, a pictorial album Republic chapterplays Foreign Agents Registration Act Ronald I. Meltzer Answer of the Rev. Henry Esson to the charges and statements of a committee of the Session of St. Gabriel Defeat Of America Presidential Power and National Character Audi Fox Service Manual, 1973-79 (Audi) Willowbys World of Unicorns From isolation to incomplete rehabilitation : the politics of cautious rapprochement, 1989-1997 Gently with the innocents Norwegian Sailors on the Great Lakes (Scandinavians in America) Blasting operations Part ten : Transplantation The Book Of Church Law Wolters kluwer annual report 2011 An Analysis of Potential Adjustments to the Veterans Equitable Resource Allocation (VERA System Manual labour as praxis pietatis : sketch of a motif in the 17th century Cistercian reform at La Trappe M Material type in sap mm Collective Preferences in Democratic Politics Les pardaillan t1 2001 ford taurus ses owners manual The seven deadly sins of business Lost in the haunted mansion Reagents in Mineral Technology (Surfactant Science) For those who work Change default application to open in osx Attempts to separate the West from the American union*