

Jisc Institution as E-Textbook Publisher project
Copyright in publishing: author rights and licences, and the use of third-party material
by Lara Speicher, Publishing Manager, UCL Press

With contributions from Chris Holland, Copyright Support Officer, UCL, and Alison Welsby, Editorial Director, Liverpool University Press

Introduction

Copyright is an area that many seem to find daunting, but although it is undoubtedly complex it's not that difficult to grasp the basics of copyright in a publishing environment and it's something anyone working in any area of public dissemination needs to know about. This blog will attempt to describe how author rights are managed in publishing, and the rules for clearance of third-party copyright for re-use in books. These rules apply to any book or other publication, whether textbook, scholarly monograph, art book etc.

The rules of copyright

In brief, copyright is a legal right that resides with the person who has created a work – whether that is writing, art, music or any other creative form – for the duration of the legal term of copyright, which is during the creator's lifetime plus 70 years after death for literary works (for other types of work, different lengths of time apply). This means that the creator has exclusive rights for the use and dissemination of their work, and has the right to control whether and how their work, or parts of their work, is used by others. Copyright laws vary from country to country, although some aspects of national copyright laws have been standardised through international copyright agreements. See list of sources of further information on copyright at the end of this blog.

What this means in the simplest terms is that no-one else is permitted to use or reproduce someone else's work in any way without the express permission of the creator or their representative. This applies to any reproduction of a work, whether found in print or online. I will go into this in more detail in the section on use of third-party copyright.

Agreements between authors and publishers

I'm going to tackle author copyright and publishing agreements before third-party copyright as I believe it's essential for authors and publishers to understand this before they can fully understand third-party copyright in this context. When an author and a publisher reach an agreement for the publisher to publish that author's work, a contract is drawn up by the publisher outlining the rights, roles, responsibilities of both parties and the terms of the publishing arrangement. Effectively, the author is granting the publisher the right to sell or disseminate their work on their behalf. In return, the publisher invests time, resource and money in reviewing, editing, typesetting, designing, marketing and selling the book.

Assignment of rights

In publishing agreements, the publisher will ask the author to assign certain rights to them. This includes a range of models including: author assigns copyright to the publisher for the term of copyright, author assigns exclusive rights to the publisher for the term of copyright, or until the work goes out of print, author assigns non-exclusive rights to the publisher for the term of copyright.

If the author assigns their copyright to the publisher, it means that the publisher is free to publish their work for the duration of copyright, without needing to ask the author's permission. Usually, in a scholarly publishing environment, it will be made clear in the contract that this right only applies to publication of the work in its original form, and any changes such as rewriting, for example, would not be permitted without the author's agreement. Specific arrangements for translation rights are usually the subject of a separate clause in the contract, which usually states that the author allows the publisher to make arrangements with other publishers for translation of their work, and specifies the share the author will receive of any sales income from translations.

When the author assigns exclusive rights to the publisher, they usually retain their copyright in the work, but they are not permitted to publish or disseminate their work elsewhere or they will be in breach of contract. If the publisher receives requests from others who wish to use the work, in full or in part in another work or in any other public form, the publisher will need to seek the permission of the author (unlike the scenario in which copyright has been assigned to the publisher). Often, the publisher will manage author rights on their behalf, so any requests for reuse of elements of the work will be handled by the publisher, who will usually have standard arrangements and fees depending on the amount of text that someone wishes to quote. Any revenue raised from such activity will usually be split with the author in percentages agreed in the contract.

When the author assigns non-exclusive rights to the publisher, which is common in the open access and digital book publishing environment, the author is allowed to disseminate their work on other platforms, but is usually restricted from simultaneous publication with another publisher for a certain period, especially if it is a new publication. This kind of arrangement is most common for mission-driven, not-for-profit publishers, who are often subsidised and do not therefore need to protect their commercial activities in order to recoup their investment in full or make a profit. It is also very common for works being published on online platforms that have previously been available in print. Under non-exclusive open access arrangements, the author or publisher will agree a form of Creative Commons licence that describes the re-use rights in that work by others. (Full details of Creative Commons licences can be found here: <https://creativecommons.org/licenses/>). While OA books are free to read and share, different forms of CC licence identify whether or not the work can also be used commercially or adapted. Some funders providing grants for OA publication require certain forms of CC licence, usually the least restrictive CC-BY licence.

In the case of textbooks, publishers commonly also ask not just for the copyright in the work but also for renewals, revivals and extensions to the full legal term of copyright in order to ensure that further editions and any accompanying handbooks or supplementary information can be produced. Another clause that is common to most author contracts but particularly important for textbooks is a 'competing text' clause to say that the author must not for the duration of the contract write a competing work for another publisher. While it is unlikely that an author would write a competing scholarly monograph, for example, since they are unique works, a competing textbook would be possible.

Reversion of rights

There is usually a clause in author-publisher contracts that specifies the circumstances in which the rights can revert to the author. This is usually when the work has been out of print for some time and the publisher has no plans to reprint it. The increase in use of print-on-demand technologies, means that some works effectively never go out of print. For some publishers, when the work is only available in print-on-demand form, this is treated in the same way as if the book was out of print for the purposes of author rights.

Third-party copyright

If an author or publisher wishes to use images or text extracts in a book from material that has been created by someone else, and if that material is still in copyright, they will need to seek the permission of the copyright owner. As mentioned earlier, the copyright in such works is often managed by a representative, whether a publisher, an agent, an image library, or another institution. Many larger publishers have rights departments devoted to this activity.

In scholarly publishing the responsibility for clearing rights for the use of third-party material and the payment of any associated fees will usually be the author's, and this will be reflected in the contract. The contract will also clearly state that the author is liable should they fail to clear the appropriate permissions and the copyright owner decides to pursue legal redress. Publishers will typically ask to receive copies of the permissions letters from the author for reassurance that the author has cleared the appropriate rights. Whoever clears the rights will usually have to provide certain details to the copyright owner such as the print run, the territories required, the size the image is to be used at and whether inside the book or on the cover, or details of the text being quoted, whether the publisher is commercial or scholarly/not-for-profit, and the language and territories the book will be published in. The copyright owner must be attributed in the book, often using very specific wording that they provide.

There is here a very specific problem for digital publishers, especially those who publish open access and who mainly publish print-on-demand. Since it is almost impossible to predict the number of downloads that a book might attract, there is no print run in PoD publishing, and the book is available globally since it is published online, the traditional means of calculating the fee by print run and territory simply don't apply. Further, if the download figure for the free OA edition was used in lieu of the print run, this could add up to a significant expense, since in scholarly publishing print runs are very low, often in the hundreds, whereas download figures can be very high, often in the thousands. Some copyright owners will now accept a fee for online publications based on a similar arrangement to permission for website use, for example. And many organisations accept a lower fee or no fee for not-for-profit scholarly publishing. Nevertheless, the clearing of third-party rights is still an exercise that involves considerable time and, potentially, cost and confusion.

Dramatic works and music

So far, I have only referred to the use of quoted text and images, but some digital works also use music, film and recordings of performances and those have to be cleared in the same way as images and text if they have been created by someone else. These can be more complex than image and text rights, because in a single piece of music, for example, copyright can be claimed by both the composer and the recording artist or artists.

Textbooks

All the above applies equally to textbooks. Some textbooks have very high print runs therefore the copyright charges for the use of third-party material in such cases can easily mount up. Many textbooks, particularly in STEM subjects, have numerous images, charts and diagrams. It is often easier and cheaper to have artwork redrawn in such cases than to try and find examples from a wide range of sources. This also has the advantage that the diagram can show exactly what the author is describing, and the diagrams have a consistent look to them. When clearing third-party copyright for textbooks, most commercial publishers will clear rights for all languages and all territories, as well as all future editions so that the publisher can easily negotiate translation deals or special editions for certain geographical areas.

Conclusion

Anyone who is producing and disseminating work, whether an established publisher or whether a university department outputting resources for the use of its students, for example, needs to grasp the basics of copyright. This needs to be understood both from the point of view of the rights retained by the original author and the licences under which they agree to publish their work, and from the point of view of any third-party material the author or publisher intends to include in their book. As with any law, claiming that one didn't know or didn't understand the regulations will not stand up in a court of law!