



READ@HOME

Copyright Guide

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INTRODUCTION & EXECUTIVE SUMMARY

The World Bank’s Read@Home initiative is an unprecedented effort to get reading, learning, and play materials into homes to address the learning loss caused by the COVID-19 pandemic and widespread, pre-existing “learning poverty.”¹ Connected to the distribution and use of these materials is the question of copyright. This guide will detail the importance of copyright and the legal conventions that exist across the world to protect the creation of books, including the books funded by The World Bank.

At the heart of copyright is the fact that **the original creator owns copyright in their work**. It is important for users to understand how creators have rights in their works and how creators, in many instances, contract with publishers, NGOs, education authorities, and others to make their works available either for sale or for free distribution. In support of The World Bank’s Read@Home initiative, this guide will focus on the critical importance of ensuring that copyright owners’ rights are recognized and that relevant legal conventions have been observed and followed.

As you will see in this guide, many legal mechanisms are in place that allow books to be distributed in multiple formats, either for sale or for free. The common denominator of all such mechanisms is that, with a few exceptions, the original author must grant permission for such distribution. It is important to understand the author’s role once the work has been created and is ready for broad distribution. It is also important to protect against “piracy,” which is the unauthorized use and distribution of copyrighted works. According to the International Publishers Association, piracy is a huge issue for authors and publishers.² Piracy hurts everyone involved in the book chain, including illustrators, booksellers, designers, distributors, and readers. Today, it is far too easy to pirate books, including ebooks. In many countries, people are not aware of the importance of copyright, and some governments do not prioritize the protection of copyright through their law enforcement departments.

This guide will provide a basic understanding of the value and importance of copyright and the various ways in which all parties involved in the book chain – from creation to publication to distribution – can be recognized and fairly compensated.

1 According to The World Bank, “learning poverty means being unable to read and understand a simple text by age 10.” See “What is Learning Poverty?” at <https://www.worldbank.org/en/topic/education/brief/what-is-learning-poverty>.

2 “Nigeria Copyright Commission Seizes Thousands of Pirated Books in Tincan Port Raid” (31 May 2021), International Publishers Association, <https://www.internationalpublishers.org/copyright-news-blog/1095-nigeria-copyright-commission-seizes-thousands-of-pirated-books-in-tincan-port-raid>.



Module 1

COPYRIGHT BASICS

What is copyright?

Copyright is a type of intellectual property (IP)¹ that grants the owner of a creative work several rights. These rights ensure that the work is not used without the permission of its owner, that the work is not changed, and that the author or owner does not lose their credit for its creation.

Copyright protects the *expression* of a work if that work is *original* and *fixed*. Copyright protects only the *expression* of an idea, not the idea itself (see the box below for an example). So, if an idea in a work is like another idea, but the authors have expressed that idea differently, there is no breach of copyright.

FOR EXAMPLE

“Boy vampire meets girl and falls in love, but they can meet only at night,” is an idea.

By comparison, “Edward, a 110-year-old telepathic vampire who shimmers gold in the daylight, meets and falls in love with Bella in biology class,” is the expression of an idea.

*Twilight, by Stephanie Meyer,
© Little, Brown and Company 2005*

Copyright is automatic, requires no formal registration, and exists as soon as an original work is created and “fixed.” For example, a story that is written down on paper has been fixed.

¹ Other types of intellectual property include patents (which protect inventions) and trademarks (which protect brands).



Copyright covers most types of creative works, including but not limited to the following:

- literary works
- artistic works
- musical works
- dramatic works
- sound recordings
- audio-visual works
- computer software

The focus of this guide will be on literary works. These may include:

- books
- compilations/anthologies (or books that include other works, like an anthology of poems)
- newspapers
- journals and magazines
- tables

Copyright covers both print and electronic versions of these items.

Literary works cover various topics and genres, including fiction (with genres such as mystery and romance), non-fiction, and educational works, among others.

Many literary works include not just words but also images and artwork. Images and artwork are “artistic works” and are also separately protected by copyright as stand-alone works. Artistic works may include:

- photographs
- maps
- paintings
- engravings
- plans
- charts
- drawings



Sometimes, the artistic works that are included in literary works have been created by someone other than the person who wrote the literary work. In such cases, there is often a “layering” of copyright.

Copyright allows authors of literary works to control how their creations are used by others. As an example, copyright gives an author the legal right to prevent others from copying their book, so that the author can make money by selling copies of the book. Without copyright, an author could write a book and then anyone in the world with a photocopier or scanner could copy it for free. That would make it hard to make a living from writing books.

With copyright protection, anyone who wants to copy, change, adapt, or sell a literary work needs the author’s permission. Copyright gives an author exclusive rights to authorize others to copy that author’s work in its original form, or to adapt, change, translate, or otherwise use (“exploit”) a work in ways that the author allows the work to be used. Anyone who does any of those things without the author’s permission is said to be “infringing” the author’s copyright, unless a copyright “exception” applies.² Should an author wish to give permission to someone else, including a publisher or an education authority, to use or publish the work, a contract or licence agreement needs to be in place. Contracts and licensing authors’ rights are covered in Module 5.

In addition to the above rights, which are termed “economic rights,” copyright gives authors “moral rights.” Moral rights allow an author to prohibit their works from being used in ways that may damage the author’s reputation or harm the value of the work.

There are some differences in copyright between common law countries and those following the civil law “droit d’auteur” tradition, including how works that are created as part of one’s employment are treated. These differences will be highlighted in Module 2, but, basically, copyright is concerned largely with economic considerations arising from an author’s work, while *droits des auteurs* (“authors’ rights”) are concerned more with the human rights of the creator.

Term (Length) of Copyright Protection

Copyright does not last forever. In different countries, copyright protection extends for different “terms” (lengths of time), but there are some general guidelines. The minimum term of protection required by the Berne Convention (discussed in more detail in Module 2) is 50 years from the death of the author. Many countries, including those in

² There are some uses of literary works that are allowed under exceptions to copyright infringement. Those exceptions will be explained in Module 2.



the European Union as well as the United States and Canada,³ have extended copyright protection to 70 years after the death of the author. Mexico has the longest term of protection for literary works, at 100 years from the death of the author. Some countries have different copyright terms for different types of works. Once the term of copyright has expired, a work becomes part of the public domain and can be used by anyone who wishes to copy and use the work in any form.

Authors and Other Copyright Owners

Copyright is a property (or asset) that can be licensed or sold. Authors license and sell the copyright in their literary works through contracts.

When an author decides that they want to allow someone else to use their literary work, they may grant a “licence” to that person (or company or organization), which gives that party permission to use the work in the ways agreed to by the author. The author can also sell their copyright to another person (or company or organization). Usually, the author receives some form of payment in exchange for the licence or sale of their copyright.

The author is usually the “first owner” of copyright in a literary work. However, if an author sells their copyright to another person, that other person then becomes the copyright owner of the literary work.

It is important to remember that the purchase and sale of a physical book or an ebook does not give the purchaser any rights to the copyright. You may buy a physical book from a bookstore, but that purchase does not give you any right to copy, publish, or otherwise use any of the copyrights in the book. In order to exercise any copyrights in that book, you must have permission from the owner.

Copyright and contracts are described in more detail in Module 5.

Open Access and Other Publishing Models for Literary Works

Copyright owners can make their works available to users under a variety of different publishing models. In some cases, works are made available free to users under Creative Commons (CC) licences.⁴ CC licences allow works to be published and distributed

³ Canada has agreed in the Canada-US-Mexico Agreement to extend its general term of copyright protection from 50 years to 70 years by the end of 2022, but has not yet done so.

⁴ <https://creativecommons.org>



without additional permissions or direct compensation to the author. These licences also identify how a literary work can be used. There are several different types of CC licences, but in all cases these licences conform to traditional copyright conventions and provide attribution to the authors. People often refer to these materials as being Open Access, Open Licensed, Open Source, or Open Educational Resources. These materials are discussed more fully in Module 3. Additional information can also be found in the Open Licensing Toolkit, at <https://www.worldbank.org/en/topic/education/brief/read-at-home>.

Conclusion

As you can see from this introductory section, there are many different aspects to copyright. These include differences in common law and civil law traditions, the length of time copyright exists, and how rights conferred by copyright can be licensed or sold. In the following modules, you will see how these rights can be assigned, transferred, or licensed in ways that maintain copyright in the work and protect the work from piracy.



Module 2

COPYRIGHT LAW

Common Law & Civil Law Traditions

Copyright is territorial, which means that copyright laws are determined by each individual country. Broadly speaking, however, there are two international copyright traditions:

- **COMMON LAW** tradition, which is in place in most countries that are influenced by the British common law tradition, that focuses on the economic benefits (or payment) that should arise from an author's work; and
- **CIVIL LAW** tradition of *droit d'auteur* (author's rights), in which the protection of the author is most important. (This is common in the United Arab Emirates and in many countries influenced by the French civil law tradition.)

Both traditions protect authors' economic interests and their ability to make money from the use of their works, but the civil law tradition also protects authors' rights, which means protecting an author's reputation against the unauthorized use or alteration of their works. Authors' rights in the civil law tradition are considered to be human rights and are an extension of a person's freedom of expression. As an example, the purpose of France's legal regime is to protect original, creative works of the mind, which are an expression of the author's personality. In countries that follow the civil law tradition, moral rights of the author exist, are "inalienable" (cannot be taken away), and cannot be assigned. In countries that follow the common law tradition, the author's moral rights are not as important as the protection of a copyright owner's economic interest.

There are often differences in common law and civil law arising from works that are created during an author's employment. In the common law tradition, the copyright tends to reside with the employer; in the civil law tradition, it resides with the author, absent any express assignment of rights. Where an author is employed by an education authority, that author may or may not own the copyright in their creations, depending on the copyright laws of that country. As will be discussed in Module 5, you can deal with these questions by contract. But, before you do, it is important to think about the legal traditions that apply in the country in question and the different starting points for copyright ownership.

The attitudes toward copyright and authors' rights differ significantly between countries that have common law traditions and those that have civil law traditions. In addition, courts often interpret the laws differently, depending on their tradition. When dealing with different countries, it is important to understand the traditions upon which their copyright laws are based.

International Copyright Treaties

While domestic copyright laws apply and govern uses made of works in a specific country, there are numerous international treaties that govern copyright across and between nations. The most widely known treaty is the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), which has been signed by 179 countries. It was first introduced in Switzerland in 1886; in the ensuing years, other agreements have been introduced by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). Most countries have signed these newer treaties and are signatories to Berne as well.

THE BERNE CONVENTION

The Berne Convention requires that its signatories extend protection to “every production in the literary, scientific and artistic domain, whatever the mode or form of its expression.”¹ It also identifies the specific rights that must be recognized as exclusive rights of authorization in signatories' domestic copyright laws.

In addition, the Berne Convention requires that signatory countries recognize copyright in a work as soon as that work is created and fixed. No registration of copyright is required (although some countries require registration in order to support litigation). The Convention also requires “national treatment,” which means that works created by citizens of other countries must be treated the same way as works created by citizens of the governing country. For example, if a German poet writes a poem that is then copied and distributed in Canada, it must be protected in the same way that a Canadian poet's poem would be protected if copied and distributed in Canada.

Finally, the Berne Convention includes some exceptions to copyright infringement and establishes a “three-step test,” which is a framework for signatories to develop their own domestic exceptions to copyright infringement. The requirements of the three-step test are that the exception

1. is limited to certain special cases
2. does not conflict with a normal use (“exploitation”) of the work
3. does not unreasonably prejudice the legitimate interests of the author

¹ World Intellectual Property Organization, “Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886),” https://www.wipo.int/treaties/en/ip/berne/summary_berne.html



TRIPS AGREEMENT

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is an international legal agreement between all the member nations of the World Trade Organization (WTO). It incorporates most of the provisions of the Berne Convention, and so WTO members states that are not signatories to Berne have to follow the same basic principles of that Convention. The TRIPS Agreement establishes minimum standards for the regulation of different forms of intellectual property for WTO member nations. The Agreement was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) between 1989 and 1990 and is administered by the WTO.

The TRIPS Agreement requires all WTO members to provide certain minimum protections for intellectual property. It requires that WTO members follow the legal obligations of the main conventions of the WIPO, the Paris Convention for the Protection of Industrial Property (Paris Convention), and the Berne Convention, except for those obligations that deal with moral rights. Also, under TRIPS, WTO members must follow the principles of national treatment, automatic protection, and independence of protection.

Each country has its own domestic copyright laws, and the specifics of those laws vary from country to country. However, the same basic principles will be part of copyright law in most countries, as the majority of countries in the world have signed the Berne Convention and/or are bound by the TRIPS Agreement.

OTHER AGREEMENTS

The following table lists a range of countries and the dates when they signed various international copyright treaties. Note that all countries listed in the table are signatories to the Berne Convention.

| Country | Berne | UCC Geneve | UCC Paris | TRIPS | WCT |
|---------------------|------------|------------|------------|------------|------------|
| Cameroon | 1964-09-21 | 1973-05-01 | 1974-07-01 | 1995-12-13 | 1995-12-13 |
| Sao Tome & Principe | 2016-06-14 | | | 2020-04-27 | |
| El Salvador | 1994-02-19 | 1979-03-29 | 1979-03-29 | 1995-05-07 | |
| Honduras | 1990-01-25 | | | 1995-01-01 | 2002-05-20 |
| Djibouti | 2002-05-13 | | | 1995-05-31 | |
| Mozambique | 2013-11-22 | | | 1995-08-26 | |

| Country | Berne | UCC Geneva | UCC Paris | TRIPS | WCT |
|-----------------|-------------------------------|-------------------------------|-------------------------------|------------|------------|
| Sudan | 2000-12-28 | | 2000-12-28 | | |
| North Macedonia | 1930-06-17 (as Yugoslavia) | 1966-05-11 (as Yugoslavia) | 1974-07-10 (as Yugoslavia) | 2003-04-04 | 2003-04-04 |
| Uzbekistan | 2005-04-19 | | | Observer | 2019-07-17 |
| Philippines | 1951-08-01 | 1955-11-19 | | 1995-01-01 | 2002-10-04 |
| Niger | 1962-05-02 | 1962-02-14 | | 1995-01-01 | 2018-01-04 |
| Senegal | 1962-08-25 | 1974-07-09 | 1974-07-09 | 1995-01-01 | 2002-05-18 |

Source: Adapted from https://en.wikipedia.org/wiki/List_of_parties_to_international_copyright_agreements

Ownership of Works

As a general rule, literary works are first owned by their author. Authors need to be aware that they own the copyright in their work. *Publishers must understand that they have the rights to publish works only when the author has given them the rights to do so, in writing.*

There are, however, some exceptions to this general rule. As described above, since copyright is “territorial,” different countries have put different laws in place to deal with situations that are not covered by the Berne Convention or the TRIPS Agreement.

In the United Kingdom, for example, if a work is written by an individual as part of their normal job, copyright will usually belong to the employer. This is fairly standard in many countries, but care should be taken when acquiring rights from a publisher to ensure that the author has given the publisher the right to publish, even if the author is writing as part of their job. Obtaining the author’s written agreement that their work can be published is the safest approach and most employers have their employees sign a contract to ensure that they as the employer control the rights to the work.

As another example, copyright in a work commissioned as a “work for hire” in the United States belongs to the commissioning party. But many other countries do not have a “work for hire” concept in their copyright laws, so they manage who owns the rights in commissioned works through contracts. Copyright and contracts are discussed in more detail in Module 5.

Copyright Registration

Copyright exists in an original work once that work has been created and produced in a tangible form (is “fixed”). Many countries have centralized databases of copyright registrations where you can search for the author and owner of a copyright-protected



work. However, formal registration of an author's work is *not* required for the work to be protected by copyright. Putting the copyright symbol © on a work is also not required.

While it is *never* necessary for copyright protection, registration of an owner's copyright can provide some proof of ownership, which could be important if an issue arises as to ownership. In some countries, such as the United States, a work needs to be registered to support any litigation.¹ The copyright notice © can also provide some indication of copyright ownership.

Technology has made it easy to copy and transmit literary works. Such works fly all around the world over the internet, whether or not the copyright owner has provided permission. While this fact does not reduce the copyright owner's rights, it does make it harder to control the uses of their works.

It is best practice for all authors and copyright owners to clearly mark their works with a ©, which indicates that they are the owner. In that way, people know who to contact for permission to use the work. It is also important that authors and publishers keep a documented and dated copy of their work in case an issue ever arises where ownership of the work is contested. Having a dated copy of your work is proof that you are the legal owner and that the law is on your side should someone post your work online or try to make copies of your work and sell them.

There are many other ways to help prove ownership of copyright in a work. These include mailing a copy of the work to oneself and keeping the envelope sealed with the date stamp clearly visible, and emailing a copy to oneself or to friends.

Rights

ECONOMIC RIGHTS

Copyright gives the owner exclusive rights to authorize their works to be:

- produced or reproduced;
- performed in public (such as a play being performed);
- communicated to the public by telecommunication;
- published;
- translated;
- adapted or arranged;
- broadcast; and
- reproduced, adapted, and publicly presented as an audiovisual work.

¹ If you are considering litigation, you will need to consult local legal counsel who can advise you on the requirements for that country.



MORAL RIGHTS

Authors also have “moral rights” to their works. “Moral rights” or *droits moraux* are “personal” rights that connect the author of the work to the work. The three major features of moral rights are:

- **ATTRIBUTION** – the right of the author to have their name or a pseudonym of their choice attached to the work (or to remain anonymous)
- **INTEGRITY** – the right to prevent a work from being modified, distorted, or changed if doing so would prejudice the author’s honour or reputation
- **ASSOCIATION** – the right to control how the work is used, especially when it might be used to promote a product or service without the author’s permission

In most countries, these rights belong only to authors and cannot be transferred to anyone else. An author can, however, waive their moral rights, which means that they agree not to complain (or exercise their moral rights) if their work is used in a way that infringes their moral rights. You will often see a waiver of moral rights in contracts with authors.

Rights Exploitation

When an author enters into a contract with a publisher, the author authorizes the publisher to exercise one, some, or all the above economic and moral rights. In this way, the publisher acts on the author’s behalf in order to use (or “exploit”) the work.

Under contract, the copyright in a work can be either assigned or licensed. An “assignment” means that ownership of the copyright is passed from the author to the publisher. The publisher then owns the copyright in the literary work and can exercise any of the economic rights of an author. In contrast, a “licence” provides the publisher with permission to use (or exploit) the copyright-protected work under certain conditions, but the author still keeps ownership of the copyright.

Copyright is divisible, which means that some or all of an owner’s copyright may be licensed or assigned. A work can be sold or licensed, in whole or in part, for certain uses, for specific lengths of time or forever, and for use throughout the world or universe or only in specific countries or jurisdictions. An owner may sell 100% of their copyright or may divide it and sell only 25% of the copyright, or only some of the associated rights. There may be multiple copyright owners in a work, and each of these owners may hold different rights to control and exploit the work. Similarly, there may be multiple authors of a work, and these co-authors may share equal portions of the copyright, or they may have agreed to different splits of the rights.



When thinking about contracts and copyright, it is important to consider the flow of rights that may occur from the creation to the final distribution of a work. A typical chain of rights might look like this:



When entering into funding agreements with education authorities or governments, you will need to: **(1)** think about what types of uses (or distribution) the education authority will make of the literary works that are being funded; and **(2)** ensure that the rights needed to distribute the works are passed along from the author to each participant, all the way through to the end user.



COPYRIGHT AND TRANSLATION

Translation is an exclusive right of the copyright owner. That means that, if you wish to translate a book that already exists, you will need to get the permission of the copyright owner to do so. If you are looking to fund an education authority to make a translation, it will be important to determine who owns the rights in the book. That will be either the original author or the publisher (if there is one). The education authority must ask for permission from the copyright owner to translate the book. If the copyright owner agrees to authorize the translation, they will grant a licence to the education authority, giving it permission to do the translation and to publish and distribute the translation in print, online, or however the parties agree. The copyright owner may ask for payment or may not – that decision is up to them.

Sometimes authors and publishers make their works available under Creative Commons licences, which allow certain uses, like translation, without seeking permission or making payments. We will explore these types of arrangements in more detail in Module 3.

Copyright in Publishing

When it comes to author/publisher contracts in publishing, there is a difference in practice between educational and academic publishing, on the one hand, and trade publishing,² on the other. In the education/academic sector, authors often assign ownership of copyright to the publisher. In most cases, they would receive an advance and royalties for sales of their book (unless they have written only a short section – e.g., one chapter – in which case they would probably receive an outright fee). This practice of assigning copyright to the publisher makes sense in this field, as educational texts are often written by many different authors. The publisher “buys” (gets an assignment of) the copyright from each contributing author in exchange for an advance and royalties, and then the publisher owns all the copyright in the book and can exploit the book as it chooses.

By contrast, in trade publishing, the author normally retains ownership of the copyright but grants the publisher an exclusive license to publish the book in agreed formats and languages, in agreed territories, and for an agreed period of time.

Specific publishing and licensing models are described in more detail in Module 3.

² “Trade publishing” refers to the publishing and sale of works primarily available through retail outlets. These books are not written expressly for educational or academic use. However, many children’s trade books are also used in schools and at home to teach and promote reading.



Exceptions

Not every use of a copyrighted work requires the authorization of, or payment to, copyright owners. There are exceptions to copyright that allow users to make use of works without seeking the authorization of, or making payment to, copyright owners. Exceptions vary by country and may include fair use or fair dealing, certain educational uses, uses for persons with visual or perceptual disabilities, and archival uses.

Exceptions can be very specific, do not generally apply to commercial uses, and can be interpreted by courts, so legal advice should be sought if you wish to rely on an exception to use another's work.

After all that theory, let's look at some examples.

EXAMPLE 1

A teacher in Scotland writes a story in his spare time, outside of his teaching hours. He posts the story online. A professor in Senegal sees the story, translates it into French, and shares it with her class. The professor is then approached by a publisher in France who wants to publish her French translation of the story in a book. What does the French publisher need to think about?

In this case, the Scottish teacher owns the copyright in the original story. Since translation is an exclusive right of the copyright owner, the Senegalese professor should have obtained the teacher's permission to translate the story. But, even though she did not get permission in the first place, the professor is still the owner of the copyright in the translation of the story (as long as the professor did not assign the copyright to someone else). The French publisher needs to get permission from both copyright owners – the teacher and the professor – to publish the French translation of the story in a book. The publisher would either:

- get a *licence* allowing the publication and a waiver of moral rights *in writing* from both the teacher and the professor; or
- get an *assignment* of rights and a waiver of moral rights *in writing* from both the teacher and the professor, if the publisher wants to own the story and the translation so that it can publish it in different languages all around the world.



EXAMPLE 2

A donor holds a story-writing workshop and invites twenty people to write stories. The donor decides that it wants to publish the stories online and also print 5,000 copies of a collection containing all the stories. Although the donor invited the authors to the writing workshop, the authors of the stories own the copyright (and moral rights) in their respective stories (even if the donor paid the authors to attend the workshop).

- The donor has *no rights* in the stories. The donor must obtain the rights from the authors to print the stories and to publish them online. The donor will need to decide whether it wants to own the stories or whether it only needs permission to print and publish them. If the donor decides that it wants to own the stories, it will have to get an assignment of rights and a waiver of moral rights in writing from each of the authors. Often, additional money will be paid to the authors for that assignment. When the donor obtains that assignment and waiver, it then owns the copyright in the stories and can do anything it wants with them – it could make them into a movie if it wanted to.
- If the donor decides that it only needs permission to do the two specific things it wants to do right now (i.e., print the stories and also publish them online), the donor will get a *licence* allowing the printing and electronic publishing, along with a waiver of moral rights, *in writing* from the authors. Sometimes a licence will also require payment of additional money to the author. With the licence, the donor can only do what the author allows it to do in the licence – no movies! (Unless, of course, the author gave permission in the licence for the donor to make a movie.)

Conclusion

This module gives you an overview of how copyright works in accordance with the legal traditions in various countries and how those traditions intersect across countries and around the world. The international treaties for intellectual property have allowed a level of protection for copyrighted works across all borders, and the legal underpinnings of these treaties take into account local and regional concerns. However, the basic premise that the rights of copyright are controlled by the creator and are passed on only through legal mechanisms remains paramount throughout the world.



Module 3

OPEN ACCESS AND CREATIVE COMMONS LICENCES

There are two major types of free and open materials in educational and academic publishing: Open Access (OA) and Open Educational Resources (OER).

- **OPEN ACCESS PUBLISHING**, which is reserved mostly for academic journals, allows these journals and other academic articles to be made publicly available online. Many governments and donors now require the researchers that receive their funding to make their work openly available. As a result, most academic publishers have now embraced the OA model. There are two types of OA models – Green and Gold. “Green OA” allows the contributors (i.e., the authors/creators) to “self-archive” their works. “Self-archiving” means posting a free copy of the work (typically research journal articles or book segments/chapters) online in order to provide free and open access. These items can be posted in an open archive or on the author’s own repository, but often embargo periods are applied before the work can be used in any way. An embargo period is normally set by the publisher, and the period varies from publication to publication.¹ “Gold OA” makes the final versions of works freely available to anyone immediately upon publication, and allows use of the work.
- **“OPEN EDUCATIONAL RESOURCES”** refers to digitized materials offered freely and openly for educators, students, and self-learners to use and reuse for teaching, learning, and research.² In November 2019, all Member States of the UN Educational, Scientific, and Cultural Organization (UNESCO) unanimously adopted an OER Recommendation to promote the increased use of OER.³

1 “Does an Embargo Period Apply to Open Access Articles or Subscription Articles?” Editage Insights, <https://www.editage.com/insights/does-an-embargo-period-apply-to-open-access-articles-or-subscription-articles>

2 See William and Flora Hewlett Foundation, Open Educational Resources Initiative (2021), <https://hewlett.org/twenty-years-of-open-educational-resources-building-robust-networks-for-innovation/>

3 <https://en.unesco.org/themes/building-knowledge-societies/oer/recommendation>



Open Licensing

Many misconceptions regarding Open Access and Open Educational Resources continue to exist, particularly around what uses can be made of OA and OER resources. OA and OER resources are often distributed to the public with Creative Commons (CC) licences – a form of Open Licence – so that users know exactly what uses have been authorized by the copyright owners. The publication *Good Stories Don't Grow on Trees*, by Neil Butcher, Lisbeth Levey, and Kirsty von Gogh and made available through the Global Reading Network, provides a clear and succinct explanation of Open Licensing and includes a table that provides a good overview of the variety of Creative Commons licence formats and the uses available under these licences:¹

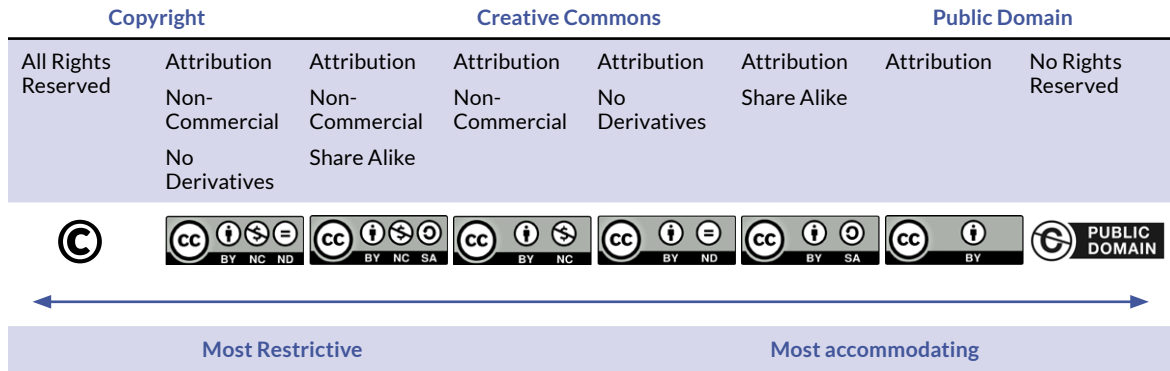
Open licensing permits users to share and, under some licences, translate or otherwise adapt the work of others without requesting written permission. Open licences thus give more choice about how content may be used. They do not replace copyright but do revise “all rights reserved” licences to “some rights reserved.” They can be applied to any creative work, including music, books, articles, photos, and videos. Output can be online and/ or offline. Some licences only permit sharing, while others enable sharing and adaptation. Unless explicitly stated otherwise, all open licences require that the original work, author, and publisher be acknowledged. Creative Commons (CC) licences are the most widely used open licences in education and publishing.

CC licences permit the copyright owner to determine the extent to which others are allowed to reuse material. Creative Commons licences range from very permissive, allowing copying and modification (CC BY), to those that are more restrictive, permitting distribution of a work in its original form, but no modification (CC BY-ND).

¹ This extract, including the table, is from Neil Butcher, Lisbeth Levey, and Kirsty von Gogh, *Good Stories Don't Grow on Trees* (Early Literacy Resource Network, January 2019), available at <http://globalreadingnetwork.net>. Licence to reproduce the excerpt in this module is available online at <https://creativecommons.org/licenses/by/4.0/legalcode>



FROM COPYRIGHT TO CREATIVE COMMONS: A SUMMARY OF RIGHTS



Several children’s content producers rely on CC BY open licensing to share and adapt children’s storybooks, using digital platforms that are free to the user. These include African Storybook (ASb) and StoryWeaver. The Molteno Institute for Language and Literacy, a South African NGO, now uses a CC licence, but it restricts its resources to a non-commercial and non-derivative (CC BY-NC-ND) licence. This licence was selected so that the methodology of its Vula Bula literacy materials can be retained. The books may not be adapted or translated without prior permission from Molteno.

The same authors have produced an Open Licensing Toolkit, which is available at <https://www.worldbank.org/en/topic/education/brief/read-at-home>.

The following examples illustrate some key points related to Open Licensing.

EXAMPLE 1

The government of an African country has decided to purchase books in Hausa for its Hausa-speaking regions. Instead of creating new books from scratch, it searches for titles on African Storybook (<https://www.africanstorybook.org/>). It finds a list of titles that were developed for another Hausa-speaking country and that are CC BY licensed. The government downloads the books, revises them slightly to match the cultural and linguistic context in its country, and prints them for the thousands of schools in Hausa-speaking regions.



EXAMPLE 2

Publishers in a South American country search the Global Digital Library (<https://digitallibrary.io/>) and find books in Quechua. The books are licensed CC BY-NC. Unfortunately, this non-commercial licence means that the publishers are unable to use those titles to produce books that they wish to sell to bookstores. Using another source, the publishers find books that are CC BY licensed, adapt them for their target market, and sell them, thus reducing their publishing costs and enabling their businesses to remain financially viable.

EXAMPLE 3

An NGO in a South Asian country wishes to develop non-fiction books for young readers about countries in the region. It searches Storyweaver (<https://storyweaver.org.in/>) and finds beautifully illustrated books that it would like to translate into the languages of the children it serves. The books are licensed CC-ND. Because of this non-derivative licence, the NGO is unable to translate these books.

EXAMPLE 4

You are a publisher who has found an article online that is available under a CC BY-ND licence. You want to put that article in an anthology, print 10,000 copies, and sell the anthologies for \$320 each. Before doing so, you need to consider the following:

- Even though the article has been made available online under a Creative Commons licence, there is still copyright in the article. You cannot assume that the CC BY-ND licence allows all uses.
- The CC BY-ND licence terms should be reviewed to determine what uses are already authorized by the copyright owner. Information on licences can be found on the Creative Commons website, at <https://creativecommons.org/licenses/by-nd/2.0/>.
- The licence says you may not apply any terms or technological measures that would restrict others from doing anything the CC BY-ND licence allows. In other words, you have to give others the same rights that you have.

(continued)



EXAMPLE 4 (continued)

- The licence also says users may copy and redistribute the material in any medium or format for any purpose, even commercially, *as long as* the user gives credit, provides a link to the CC BY-ND licence, and makes no derivatives. The first two items seem clear enough, but what does “no derivatives” mean?
- The CC BY-ND licence says that, if you remix, transform, or build upon the article, you may not distribute the modified material. This prohibits you from creating adaptations. But, is an anthology an adaptation (or derivative) of the article? According to CC, maybe. But also maybe not.
- CC says that incorporating an unaltered article in a larger work creates an adaptation only if the larger work is built upon and derived from the article. When the article is combined with other material in a way that creates some new version of the original, that would be a derivative work and would not be allowed. If you took a song and incorporated it into another song, that would be an adaptation of the original song and would not be allowed under the CC BY-ND licence. If you wrote a story that was based on the article and included part of the article in it, that story would be a derivative work and would not be allowed under the CC BY-ND licence.
- Different countries will have different interpretations, but generally there is a difference between a compilation (which results from a process of selecting, bringing together, organizing, and arranging) and a derivative work (which requires recasting, transforming, and/or adapting). Provided that your anthology is simply a rearrangement or bringing together of various articles, it is likely that the anthology would be considered a compilation – not a derivative work – and would therefore be allowed under the CC BY-ND licence. However, different laws will apply in different countries, so you should seek advice from experts in the country you are working in.

As you can see, sometimes apparently simple examples can get complicated fast!



FAIR

In recent years, a new acronym, FAIR, has emerged that better captures the variety of methods employed to allow users access to free and open resources. FAIR stands for “findable, accessible, interoperable and reusable,” and is intended to more clearly define what Open Access is. It was originally proposed in 2016 and has been endorsed by the European Commission and by the G20 at the G20 Hangzhou Summit.²⁵ It is anticipated that, over time, these principles will find their way into many countries’ copyright legislative frameworks.

Funding for OA and OER Publications

In many cases, the authors of OA content made available through a CC licence agree to provide the content free of charge. However, these books still require a financial commitment for things such as editing, design, and posting. The funding required to cover these costs can come from a variety of sources, including payment from the authors. Many journal articles and published research findings are funded through public or private grants that may pay for the development of the publications and their related online distribution costs.

Since many OER works are made available in hard-copy format, the financial commitment is much higher than for works only made available online. As well, many authors of OER materials require payment for their work. The funding agency must therefore factor these additional costs into the funding formula.

Conclusion

In all countries of the world, Open Access and the provision of free information, particularly for education, has seen exponential growth. The use of CC licences and the development of resources under OA and OER models continues to grow and expand. In all cases, though, the costs related to development and payment to the authors must be factored into the choice of approach. For more information on how these models are evolving, see the links in the Reference section of the guide.

²⁵ See G20 Leaders’ Communique, Hangzhou Summit (September 2016), section 12, at https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_16_2967



Module 4

RIGHTS COVERED BY COPYRIGHT

When developing new books or licensing existing books, the various rights covered by copyright, and the range of those rights, are important, whether the books are developed and made available under traditional copyright or made more freely available under Creative Commons licences.

You will recall that the author is (almost) always the first owner of copyright in the work the author creates. As a result, the rights held by the author that would allow their work to be copied, adapted, translated, or used in other ways that they want, must be assigned, transferred, or licensed to another party (normally a publisher) before any new works or new publications that include the author's work are created. The publisher negotiates with the author for the rights that are necessary for the publisher to publish the work.

The author normally grants rights to a publisher under a contract – see the sample contract in the References section (["Author Contract: African Publisher" on page 55](#)), and that contract would normally include the term (or length of time) for which the author grants the rights, the territories for the sale of the work, and other subsidiary rights such as translation, co-edition, or reprint rights. The contract between the author and the publisher will also contain details on advances and royalty payments. (See Module 5 for a more detailed discussion of items included in contracts.)

You will also recall that, in many cases, the copyright for educational resources is owned by the publisher rather than the author (such as when a work is created in the course of employment or under a “work for hire” arrangement in certain countries). In those situations, the publisher will have the rights it needs to publish the work, because the publisher is the owner of the copyright. If an education authority is acquiring rights to an already published educational work, it will likely negotiate with the publisher of the work rather than the author.

There are various business models that come into play when negotiating contracts for copyright-protected work. These are determined mostly by how the acquiring party wants to distribute the resource and compensate the author. The following diagram illustrates common options for assigning and licensing rights.



AUTHOR

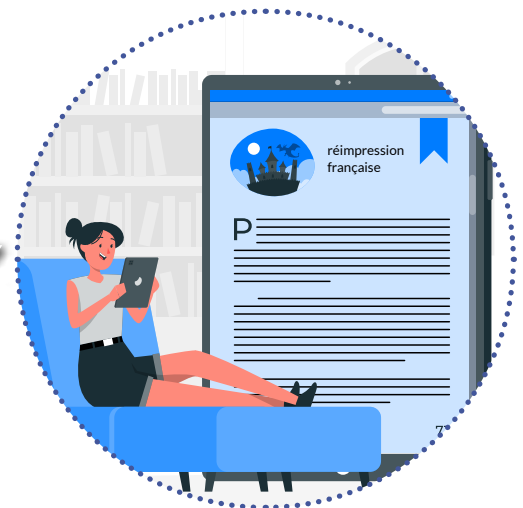
(owns all the rights)



*Author
assigns or
licences
rights*



Publisher licences rights



*Publisher makes the work available
for sale, online or in a print edition*

PUBLISHER

(acquires all or some rights under a contract with the author)



3RD PARTY

Other publisher, NGO, education authority, etc.

They could do a co-edition, a reprint, a translation, or an ebook





Translations

As discussed earlier, translation is an exclusive right of the copyright owner. So, if someone wants to translate a literary work, they will need to obtain translation rights from the owner. If the acquiring party wants to translate a book, the rights to create a translation must be included in the contract between the author and the original publisher, and the acquiring party must then also obtain those rights. The translation rights need to include details about both the extent of distribution (territory) and how the work is to be distributed (i.e., whether it will be sold or made available under an CC licence). Normally, if the translated book is not going to be sold by the acquiring party, a prearranged fee is negotiated between the acquiring party and the original publisher for the translation rights.

Co-Editions and Reprints

Co-edition and reprint licences are the most common form of licensing. A co-edition is most often used when the acquiring party wants the publication in substantially the same form as the original work.

- A **CO-EDITION** license is when the original publisher prints additional copies as a *run-on* (expansion) of its original print run. This can be particularly beneficial if the book is heavily illustrated in colour and the acquiring party requires only a limited number of copies. The costs associated with independently publishing a limited number of copies may make such a publication unaffordable. Adding to the original publisher's print run should decrease the unit costs for all parties.
- A **REPRINT LICENCE** is when the acquiring party pays a fee and buys files of the original work and arranges to print its own copies. This approach has advantages if the acquiring party is going to publish the work in a different form or size or include the work in a compilation, or if it needs a large number of copies and will procure printing competitively (such as for a World Bank project).

Each of these licences has advantages and disadvantages. However, for most large-scale projects, a reprint licence likely makes the most sense, as it allows the acquiring party to control the timing of the print run and order enough books to meet the objectives of the project. Most co-edition licences are negotiated on a “royalty inclusive” or “royalty exclusive” basis. The only difference between these two options is that, on the “royalty exclusive” basis, the acquiring publisher pays the royalties to the



original publisher as the books are sold, while, on the “royalty inclusive” basis, the total compensation for the book is paid upfront. Royalties are discussed in more detail in Module 5.

Other Subsidiary Rights

Many other subsidiary rights may be included in contracts for literary works. These rights include audio and podcast rights, ebook rights, dramatic rights, radio and television rights, and motion picture rights, among others. For educational and academic publishing, the most relevant of these are audio and ebook rights. The compensation and royalty rates for subsidiary rights are often different than those for print copy sales. For example, the royalty rates for ebooks can be as high as 25–50% of the purchase price, whereas royalty rates for print books are rarely higher than 15% and are more often in the 8–12% range.

Digital Technology & Digital Rights

The widespread use of mobile and internet interfaces has greatly impacted how users can access content. The interfaces where content is made available can and should use legal copyright constructs and instruments (e.g., the copyright symbol should be included, terms and conditions should be provided on websites, and, for open distribution, CC licences should be in place). In many cases, digital formats for displaying content replicate print formats and can, with the available copyright conventions, protect the original creations of their authors. Many of copyright’s underlying principles remain equivalent in non-digital and digital technologies, and existing copyright legislation applies to all formats, whether analogue or digital.

It is important to keep in mind that copyright exists in works that are posted online, even if they seem to be freely available to internet users. Sometimes works are posted online without the permission of the copyright owner. Piracy and copyright infringement are big problems for authors, publishers, and anyone else who invests time and money into creating works. Other times, as discussed earlier, works are made available online by the copyright owners, subject to certain restrictions. The copyright owner may have posted an article online for people to read but may prohibit any other use of the article. Even when a work is posted online, the copyright owner still has the rights to the work, and these prevent someone else from unauthorized use of any of the owner’s rights, including reproduction or further distribution of the work. If you are sourcing content from the Web, pay close attention to whether the copyright owner put the content up and whether any permissions have been granted for further use of the work. If there are no such permissions, you will need the permission of the copyright owner to make other uses of the work. When putting content on the internet, ensure



that you (1) have thought about what uses you will allow others to make of the content; (2) have the rights from the copyright owners for those uses; and (3) clearly state who is the copyright owner of the content (with a ©) and what uses of the content you are authorizing.

Conclusion

How an author or creator manages the rights conferred upon their creations by copyright law involves understanding what those rights are and how they can be transferred. This module has focused on how those rights are transferred either under licence or assignment, and particularly on how a publisher controls the rights after entering into a contract with a creator. The proliferation of works in the online world has also been examined, and it is important to understand that such technology has been a disruptor, especially where the open and free distribution of works is concerned. This disruption continues, even with the advent of OA models. Governments around the world are facing ongoing concerns about balancing the rights of creators and users, along with the realities of technological innovation and uses. For more information, please refer to the References section ("[References](#)" on [page 38](#)).



Module 5

COPYRIGHT AND CONTRACTS

As discussed in earlier modules, authors enter into contracts with people (or companies or organizations) who wish to use their works. Through a contract, an author of a literary work will authorize a publisher to publish that work. Similarly, a publisher that has copyright in a literary work may authorize another user (such as a student, teacher, or even the general public) to use the work in certain ways. So, when thinking about copyright and contracts, you need to think about how the rights flow from author to publisher and to end user.

As discussed in Module 2, contracts for the use of copyright in literary works take the form of either a licence or an assignment. A *licence* is permission to use the work under certain conditions. In a licence, the author (or copyright owner) keeps ownership of the copyright. A copyright licence will describe the specific uses that are authorized by the owner of the copyright and will generally set out the length of time (“term” or “duration”) for which these uses are permitted. Under a copyright licence, a work can be licensed to another, in whole or in part, for certain uses, for specific lengths of time or forever, and for use throughout the universe or the world, or in only specific countries or jurisdictions.

An *assignment* is a sale of the copyright in the literary work, in which title to the copyright passes from the author to the purchaser. When the purchaser buys the copyright through an assignment, the purchaser becomes the owner of the copyright.

When signing a contract with an author, most publishers include in the contract specific rights that they wish to use. The author agrees to those rights by signing the contract.

The balance of this module discusses the clauses you will see in a typical publishing agreement.

Term (Duration) of the Contract

The parties need to decide the “term” of the contract – that is, how long the agreement will last. The publisher considers how long it needs to produce and sell the work; the author considers how long they wish to give the publisher the right to do so.



The term or duration of a copyright licence can be different than the term of copyright protection discussed in Module 1. The contracted term can be for a specific period of time, or it can be for the full term of copyright protection in the jurisdiction in question. Once the term of a contract is over, the deal expires, and all rights revert back to the author.

As an example, think of a publisher who wants to publish a translation of a book and sell it in the publisher's own country. The publisher will need time to have the book translated, edited, designed, formatted, printed, and bound, and then will require a period of time to sell the book. The term of the contract needs to be long enough to do all of these things. By way of contrast, think of a donor who is running a writing workshop online for one week and wants to use some academic articles in that workshop. In this case, the donor only needs the rights to use those articles for one week, and so the term of the contract can be much shorter than that required by the publisher in the preceding example. It is important to note that, usually, the longer the term of the contract, the more expensive the rights will be.

Many contracts have "fixed" terms – for example, a contract may specify a term of 10 years. But the term of a contract may depend or be conditional on certain factors – and the key factor is usually related to sales of the work. The most common way in which contracts address sales-related factors is through a "rights reversion" clause. The publisher may agree that when sales decline to a point where it is unprofitable to keep the book in print, the rights will revert back to the author, and the term of the contract will expire. As an example, the term of a co-edition or reprint may be defined by the number of copies printed. If the demand for the book declines to the point where it is no longer economically feasible to do another print run, the term of the contract may end.

Other factors, such as the need for a new edition, may influence the term of a contract for copyrighted works. A term could be extended by a number of years in order to publish a new edition.

Grant of Rights

The grant of rights clause is where all of the copyright knowledge you now have comes into play! It will lay out who will own the copyright and what rights the author will give the publisher.

Subsidiary Rights

As discussed briefly in Module 4, subsidiary rights can include audio and podcast rights and ebook rights. This clause reflects the agreement between the author and publisher with respect to these subsidiary rights.



Territory

This clause will determine where the publisher can use its rights. Remember, territory can be worldwide or can be limited to various countries, a specific country, or some other area or jurisdiction. If you will use the work online, you need worldwide rights unless you are able (and want) to geoblock the use (i.e., apply technology that restricts access to online content based on the user's geographical location). If you intend to broadcast the work to or from space, you will need the rights to the universe. (After the astronaut Chris Hadfield broadcast his version of David Bowie's song "Space Oddity" from the International Space Station, the territory specified in many agreements was changed from the world to the universe.)

Royalties

Royalties are monies paid to an author for each copy of a book sold. They are set either as a percentage of the retail sales price (i.e., gross revenues) or as a percentage of the net amount received by the publisher for sales of the book. For publishers, the advantage of a royalty based on net receipts is that many publishers sell at different discounts to different customers. Paying the author a royalty based on the net amount received makes accounting and royalty payments much simpler (and cheaper).

As stated in earlier modules, for many academic and educational texts that have more than one author, a set fee, instead of an ongoing royalty, will be paid to the contributing authors. These fees are included in the upfront fixed costs that a publisher must spend to bring the book to market. In cases where a third party wishes to license the book for distribution, some contracts require an additional fee or royalty payment to the authors.

Third-Party Licences for Reprint Rights

When negotiating contracts for cases in which a third party wishes to license a book for distribution, a publisher would normally factor into the licence fee the amount it would typically profit from sales in the territory in question. The following hypothetical example illustrates some factors to be considered in determining reprint fees.



FOR EXAMPLE

A third party wishes to acquire the reprint rights to a 10-year-old book from a publisher, with the intention of distributing more than 100,000 free copies of the book. The publisher is currently selling the book at the equivalent of US\$2.00, but the book has passed its peak selling cycle: it is selling only 250–500 books per year and has not been reprinted in the past five years. The publisher had enough stock to satisfy sales of 500 books a year for another two years. The question is, “How much should the third party pay the publisher for the reprint rights?”

From the publisher’s point of view, the book in question has been paid for, and it is a reasonably profitable backlist book. If the royalty and overhead costs (i.e., the ongoing fixed costs of rent, salaries, packing supplies, etc.) total 50% of the selling price, then the book over the next two years, until it is “out of print,” will earn the publisher approximately \$1.00 per copy sold. At projected annual sales of no more than 500 copies, the publisher would profit at most by only \$1,000 over the next two years.

Given these figures, how much should the third party offer the publisher, who, after the reprint licence is granted, will no longer be able to profit from the book or, foreseeably, even be able to create a new edition, as the market will be saturated with over 100,000 free copies of the book? Those copies could, however, help the author’s and publisher’s reputation, as the book will be widely read, and perhaps other books by the publisher or author might see increased sales as a result. Should the publisher be offered 10 or 15 times the current profit level of \$1.00 per book, or should the third party negotiate a fair price that would also include a payment to the original author? These are all factors that would influence how much the third party should pay for the reprint rights.

The following table outlines some scenarios that could be used to arrive at a fair licence fee for reprint rights, with a low end of 3–5% of the sales price and a high end of 6–8%, using the original publisher’s price to the market of \$2.00. Using the \$2.00 price point and assuming that the 100,000 copies will be fully distributed, the offer price could vary anywhere from \$6,000 to \$16,000. Should the third party want to distribute more than 100,000 copies, the offer price would be a flat 1–2% (of the original \$2.00 price) for each additional 100,000 copies. The total fee for 500,000 copies, then, would be between \$14,000 to \$32,000.

(continued)

| | LOW END: 3-5% | | HIGH END: 6-8% | |
|---|---------------|---------------------------------|----------------|----------------------------------|
| 100,000 copies at sale price of \$2.00 | 3% | $.06 \times 100,000 = \$6,000$ | 6% | $.12 \times 100,000 = \$12,000$ |
| | 4% | $.08 \times 100,000 = \$8,000$ | 7% | $.14 \times 100,000 = \$14,000$ |
| | 5% | $.10 \times 100,000 = \$10,000$ | 8% | $.16 \times 100,000 = \$16,000$ |
| Per additional 100,000 copies | 1% | $.02 \times 100,000 = \$2,000$ | 2% | $.04 \times 100,000 = \$4,000$ |
| Total for 500,000 copies | 3% | $\$6,000 + \$8,000 = \$14,000$ | 6% | $\$12,000 + \$16,000 = \$28,000$ |
| | 4% | $\$8,000 + \$8,000 = \$16,000$ | 7% | $\$14,000 + \$16,000 = \$30,000$ |
| | 5% | $\$10,000 + \$8,000 = \$18,000$ | 8% | $\$16,000 + \$16,000 = \$32,000$ |

Of course, all of these figures are hypothetical, and this is only one possible way to estimate the cost of purchasing reprint rights.

Advances

Many publishers pay authors an advance. Normally the advances are set out in the contract as an “advance against royalties.” This method of payment to the author allows for the author to be paid a certain amount upfront for the work involved in creating the book long before it is available for sale. The advance is paid to the author and, when the book is sold, is credited against the royalties due to the author: when the publisher calculates the royalties payable to the author from sales of the book, it will first deduct the advance it has already paid out.

If, for some reason, the book doesn’t sell well when released into the market, the advance may not “earn out.” Some contracts call for the author to repay the advance should this occur.

Non-Assignment

Sometimes authors require that their publisher get their approval before the publisher can grant a licence to a third party. When a third party wants to license a work from a publisher, care must be taken to examine the original author’s contract, as it may contain a clause requiring the author’s approval for such a licence.



Delivery and Acceptance

If a publisher is funding a work to be written (instead of licensing an existing work), the contract will usually contain a “delivery and acceptance” clause. This clause states the date by which the author must deliver the manuscript to the publisher, and how many days the publisher has to either accept the manuscript or send revisions back to the author.

Accounting and Payment

The accounting and payment clause states how often the publisher must issue an accounting statement for and make any royalty payments to the author.

Some Typical Contractual Arrangements

The following list illustrates typical arrangements in educational and academic publishing with respect to copyright and royalties/fees. The royalty percentages are benchmarks used in most developed countries. Please see the sample contract in the References Section (["Author Contract: African Publisher" on page 55](#)) for the royalty percentages in a contract from an African country.

- **EDUCATIONAL (TEXTBOOKS)**
 - Authors receive royalties based on net revenues:
 - elementary and high school, < 10% royalty
 - college and university, 10–15% royalty
 - may be higher if a certain sales target is met
 - Copyright is usually assigned to the publisher

- **ACADEMIC/SCHOLARLY** (university presses and scientific, technical, and medical publishers)
 - Peer-reviewed books and journals
 - Possible provisions for royalties, but rarely any revenue share to the author because sales can be low
 - Copyright stays in the name of the author
 - Such publications are now mostly available through e-subscriptions



- **FEE-BASED COMPENSATION**

- Common for educational works with multiple authors, but can be used for single authors as well
- Fees for commissioned works must be adequate and fair
- If the books are to be distributed free of charge, payments to authors should reflect local payment rates for similar types of work or should reflect what the royalty would have paid the author if the book met its sales targets (see example below)

FOR EXAMPLE

A local writer who may have also been a teacher is hired to create an early literacy storybook of 24 pages and will be paid a fee instead of a royalty. The fee should reflect the amount the teacher would have been paid in their teaching position, pro-rated to the time involved in creating the storybook. Normally, this amount would then be increased by 15–20% to compensate for the fact that the work is temporary, not full time. If the writer is still teaching full time, the publisher will normally negotiate a fee that reflects an hourly rate and is acceptable to the teacher.

A publisher hires a local writer, who is also a literacy worker, to create an early literacy storybook of 24 pages. The writer takes a week away from her job to write the storybook. The fee should reflect the amount the literacy worker would have been paid in her professional position, pro-rated to the time involved in creating the storybook. Normally, this amount would then be increased by 15–20% to compensate for the fact that the writing work is temporary. If the writer is still working full time and is writing outside work hours, the publisher will normally negotiate with the writer to determine a fee that reflects a mutually acceptable hourly rate.



The following chart from the [International Authors Forum](https://www.internationalauthors.org/wp-content/uploads/2017/10/IAFs-Ten-Principles-for-Fair-Contracts-for-Authors-August-2016.pdf) outlines principles for fairness for authors when contracts for publication are drafted.

| | Principle | Fair Contract Terms what we want | Unfair Contract Terms what we don't want |
|----|--|--|---|
| 1 | <i>Contracts should not be forever</i> | Defined time limits and clear termination triggers. This is especially important for eBooks | Unlimited time periods or automatic renewals. 'Out of print' is no longer relevant in the digital age |
| 2 | <i>Authors should share in the success of their creation</i> | Guaranteed advance paid in full before publication and fair royalty rates to be paid in regular instalments | Buy out or lump sum (flat fee) contracts that do not recognise success, or expectation of unpaid work |
| 3 | <i>Authors' copyright should be respected</i> | Clear contract terms detailing the rights being granted and specifying their intended use. Copyright in the author's name and the author to be credited within or in direct contact with images | Assignment of copyright or other IP licences wider than necessary for all contemplated uses of the work |
| 4 | <i>The person being granted any right must use it or lose it</i> | The author can reclaim their rights (rights reversion) on demand when they aren't exploited after a defined period, or sales reach defined minimal levels. This should be written into the contract | The "lock in effect": whereby third parties (such as publisher or producer) retain rights they're not exploiting, or refuse to revert rights when sales are minimal |
| 5 | <i>Authors' work should reach its broadest possible audience</i> | Commitment from the publisher/producer to exploit the author's work so it is as widely available and accessible as reasonably possible and to recognise and reward authors for all forms of access. Agreement to preserve metadata in visual data files | Failure to exploit work. Limitation of potential distribution channels due to, for example, not meeting accessibility standards or the traceability of the work to the author being lost through loss of metadata |
| 6 | <i>Contractual commitment to payment and regular payment reports for all uses of authors' works</i> | Regular, detailed and transparent royalty statements with an audit clause allowing unlimited lookback in the contract. Regular payment dates with interest paid on late payments | Non-existent, infrequent or non-transparent reporting, or irregular payment to authors |
| 7 | <i>Authorship and the integrity of the work should be respected</i> | Moral rights to be protected by statute, unwaivable and respected including attribution of all creative contributors to the work. Author to be consulted when the work may be amended, translated, adapted or its integrity otherwise potentially affected. The author to be credited prominently on the work and in all publicity and metadata. Illustrator's credits to be in direct contact with images | Moral rights waivers, unlimited rights for the publisher or producer to produce derivative or otherwise adapted copies. Statutory moral rights being overridden by contractual rights |
| 8 | <i>Authors' future availability and choice in the marketplace should be safeguarded</i> | Limited competition and option clauses should be avoided. If they are absolutely necessary to protect the publisher's investment they should be narrowly and clearly defined | Excessive non-compete clauses and options binding authors to the publisher or producer |
| 9 | <i>Clear contracts with defined terms for all parties</i> | Clearly defined contract terms and responsibilities with an agreed definition of what is 'reasonable' and 'not to be unreasonably withheld' | Vague and imbalanced allocation of decisions and responsibilities |
| 10 | <i>A fair balance between risk and profit</i> | Clearly defined and limited indemnity clauses, with a fair balance of risk. Publishers to include authors on any applicable liability insurance | Authors being liable for matters in publishers' control or matters of which publisher has been notified. Authors being liable for unproven claims |

Source:

<https://www.internationalauthors.org/wp-content/uploads/2017/10/IAFs-Ten-Principles-for-Fair-Contracts-for-Authors-August-2016.pdf>



Conclusion

The importance of contracts for copyright protection is critical for all parties. The original primary contract between the author and the publisher should establish how the copyright owner want their rights to be exercised by the publisher. Any potential future dealings by the publisher with the author's copyrighted work should be covered in the primary agreement. If, however, the author has assigned their copyright to the publisher, all rights reside with the publisher, and the publisher can exploit those rights in any way it wants.



Summary

As you can see from this short guide, copyright has many facets. In almost every country in the world, copyright of a work exists and is wholly owned by the author once the work has been created and is in a fixed form. While that statement seems very simple, there are any number of outside legal influences that must be recognized by anyone who wishes to publish the work, use the work if it has already been published, or create a new version or translation of the work. This publication is intended as a general guide to the issues that must be considered when dealing with copyright-protected literary works, but it is not intended to replace legal advice. The choices for those who want to create, publish, and distribute works in any form or format are complex, and all need to be evaluated against the local legal framework of the country where the works are created.

As technology evolves and works are easily distributed in multiple formats, the traditional business practices related to published works are changing. Many works are available only in digital formats, and in many cases are made available free of charge to users – some of them legally and many of them illegally. At the same time, the legal framework for copyright has evolved, and many legal options are now available to anyone who wishes to make works available online and free of charge. We fully expect that these practices, particularly in developing countries, will continue to grow and that development organizations, NGOs, and other funders will employ these relatively new legal instruments, such as the Creative Commons licences, to make their works available. Such use still needs the authorization of the primary owner of the copyright, and so an understanding of how the works were created is important, including whether the works were created exclusively by the author or as a requirement of their employment. In all cases, knowing the local legal framework is important.

In this guide, we have tried to give you a clear overview of how copyright works and what some of the legal influences are for authors, publishers, and third parties who may want to purchase and distribute the work. Should you wish to know more about copyright, please refer to the References section (["References" on page 38](#)) for links to a wide variety of sources.



REFERENCES





RESOURCES AND LINKS

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2. **Copyright Basics – Circular 1** – United States Copyright Office <https://www.copyright.gov/circs/circ01.pdf>
3. **What is intellectual property?** (pdf) WIPO <https://www.wipo.int/publications/en/details.jsp?id=255>
Managing intellectual property in the book publishing industry booklet No 1.
4. **A Basic Guide to Open Educational Resources** – The Commonwealth of Learning http://oasis.col.org/bitstream/handle/11599/36/2015_UNESCO_COL_A-Basic-Guide-to-OER.pdf?sequence=6&isAllowed=y
5. **Open Access Publishing : What is Open Access?** <https://guides.library.cornell.edu/openaccess>
6. **Open Access Publishers Association** website: <https://oaspa.org>.
7. **The International Authors Forum: Ten Fair Principles for Authors (Writers, Visual Artists and Translators)**, <https://www.internationalauthors.org/wp-content/uploads/2017/10/IAFs-Ten-Principles-for-Fair-Contracts-for-Authors-August-2016.pdf>
8. **The Berne Convention**
More detailed information on WIPO, the Berne Convention, the UCC and the Paris Revisions can be found at <http://www.wipo.int/treaties/en/>
9. **TRIPS – Trade-Related Aspects of Intellectual Property Rights** https://www.wto.org/english/tratop_e/trips_e/trips_e.htm
10. Hutchinson, Cameron **DIGITAL COPYRIGHT LAW** – Toronto: Irwin Law; 2016
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Sample 1

AUTHOR CONTRACT: Author's Association



WRITER PUBLISHING AGREEMENT

This Agreement is made and entered into on the day of _____, 20xx.

BETWEEN INSERT PUBLISHING COMPANY NAME, with offices located at INSERT ADDRESS OF PUBLISHER (hereinafter referred to as “the Publisher”)

AND (NAME OF AUTHOR)

Of (COMPLETE ADDRESS) _____
(hereinafter referred to as “the Author”).

Collectively referred to as the “the parties”.

WHEREAS:

- A. The Publisher is an enterprise engaged in the business of printing and publishing works.
- B. The Author has written or created the work tentatively entitled _____ and has provided the Publisher with a draft of manuscript of same (hereinafter referred to as “the Work”).
- C. The Author has represented to the Publisher that the Work has not been previously published in any territory.
- D. The Author has agreed to grant the Publisher the rights set out below to facilitate the Publisher’s publication and exploitation of the Work on the terms and conditions set out below.

IT IS AGREED as follows:

1. GRANT OF RIGHTS

- 1.1 In consideration of the payment by the Publisher to the Author in accordance with Clause 2 herein, the Author grants to the Publisher the exclusive Rights, in the defined Territory throughout the Term.

2. PAYMENTS

- 2.1 In consideration of the full and proper observance and/or performance of the Author of her services, warranties and undertakings under this agreement, the Publisher shall pay to the Author:



- i. an advance of _____ (CURRENCY) Dollars \$ _____ upon execution of this Agreement;
- ii. a royalty percentage of 15 percent (15%) of Net Sales received by the Publisher, in respect of the Rights, save and except for Rights in Electronic Form.
- iii. a royalty percentage of 50 percent (50%) of Net Sales received by the Publisher, in respect of Electronic Form Rights.

2.2 For the avoidance of doubt, the payment to the Author is based on the fulfillment of her obligations in respect of the Work and the agreement herein.

3. SUBSIDIARY RIGHTS

In consideration of the full and proper observance and/or performance, of the Author's services, warranties and undertakings under this agreement, the Publisher shall pay to the Author, in respect of the Subsidiary Rights, the applicable percentages of the Publisher's net receipts from the licensing of such rights as detailed in Schedule 1 hereto.

4. DELIVERY AND ACCEPTANCE

The Author undertakes to deliver to the Publisher by the DATE :

- 4.1** two (2) identical clear legible and clean copies of the complete typescript, with double-spacing, of the Work in a hard copy format and/or such digital format as the Publisher may require. The form content and extent of the Work shall in all respects be as stipulated by the Publisher to the Author.
- 4.2** a complete list of all material taken by the Author from other sources for inclusion in the Work.
- 4.3** Should the Author neglect to deliver the above-mentioned typescript, together with any illustrative and/or additional material by the prescribed date (or any extension thereto mutually agreed in writing) the Publisher may, at its sole discretion, decline to publish the Work in which case this Agreement shall terminate forthwith, provided that the Author shall, upon the Publisher's written request, repay to the Publisher any monies which have been paid to the Author under this agreement.



5. ACCEPTANCE AND CARE OF WORK

- 5.1** The Publisher shall accept the Work for publication provided that the complete typescript and any other material that the Author is to supply, conforms to the form, content and extent of the Work as shall be reasonably required by the Publisher. The Work, as finally amended and marked for press, shall be sent to the Author for his prior review, comments and approval of all substantive changes. It is agreed and understood that the Publisher shall duly take into account, have bona fide discussions with the Author, and seek to incorporate any reasonable amendments that the Author may have in respect of the said substantive changes, it however, being understood and agreed that, following such discussions and any applicable reasonable amendments, the final approval of the Work shall vest with the Publisher.
- 5.2** Further to sub-clause 5.1 herein, should the typescript not so conform, the Publisher may require the Author to make amendments to the Work, within two weeks of notice of same, or such time as the parties may agree, to ensure that it does so conform. If the Authors are unable or unwilling to make such amendments, or to arrange for them to be made, within such reasonable period of time as shall have been agreed by the parties, then the Publisher shall have the right to make such amendments and to deduct the cost thereof from any sum which may become due to the Author under this agreement.
- 5.3** The Publisher reserves the right to alter or to insist that the Author alter the text of the Work in such a way as may appear to the Publisher appropriate for the purpose of removing or amending any passage which may reasonably be considered objectionable or likely to be actionable at law.
- 5.4** The Publisher shall take proper care of any typescripts or other materials submitted by the Author to the Publisher but shall not in any way be liable for loss or damage to any such material.
- 5.5** The Publisher shall be entitled to dispose of any typescripts of the Work in its possession on publication, unless the Author has previously requested, in writing, it to return the edited typescript once the Work has been printed.

6. PROOF CORRECTION

- 6.1** The Author undertakes to read, check and correct the proofs of the Work, and return them to the Publisher within two (2) weeks of receipt of same, failing which the Publisher shall consider the proofs as passed for press.
- 6.2** The costs of all corrections and alterations made by the Author in the finished artwork and the proofs (artists', copy-editors' and printers' errors and those alterations made

necessary by changes in professional practice excepted) in excess of ten percent (10%) of the cost of the origination of the Work shall be borne by the Author, provided that:

- i. before passing proofs for press the Publisher shall advise the Author in writing of the amount of the excess; and
- ii. the Author shall have the opportunity exercisable within fourteen (14) days of receipt of written notice from the Publisher to remove or reduce such corrections or alterations.

6.3 Should any charge arise under this Clause the amount may be deducted from any sums which may become due to the Author under this agreement.

7. UPDATING OF WORK

7.1 If in the opinion of the Publisher, a new edition of the Work is desirable or necessary, it shall notify the Author of same in writing.

7.2 The Author undertakes to revise and edit the Work and to supply to the Publisher, by such time as shall be mutually agreed in writing between the parties, any new matter that may be needed to keep the Work up-to-date, such new matter to be supplied at no cost to the Publisher or on such terms as shall be mutually agreed in writing between the parties.

7.3 Should the Author neglect or be unable or unwilling to supply such new matter or to revise or edit the Work, the Publisher may after written notice to the Author arrange for a competent person or persons to do so and may deduct the expense thereof from any sums which may become payable to the Author or their representatives under this agreement.

7.4 The Publisher may display in the revised Work and in all appropriate publicity material for the revised Work, where applicable, the name of the person who revised the Work together with the names of the Author.

8. COPYRIGHT MATERIAL FROM OTHER SOURCES

8.1 The Work shall not contain any textual or illustrative material taken from other sources, except with the prior written consent of the Publisher and the copyright holders of such material.

8.2 The Author shall advise the Publisher of the quotation or inclusion in the Work of any textual or illustrative material from any source and the Publisher shall obtain, wherever any third party work is to be included in the Work, written permission from the copyright holders for the inclusion of such material and shall ensure that appropriate acknowledgment is made in the Work.



- 8.3** The Publisher shall pay any necessary fees for permission to include such material in the Work, provided that it shall exercise same in accordance with one of the following options:
- a. require the relevant the Author to substitute alternative materials which are available at a cost acceptable to the Publisher; or
 - b. after first informing the Author in writing of the amount for clearance, deduct the same from any sum which may become due to the Author under this Agreement.

9. PUBLICATION

- 9.1** The Publisher shall, provided that the Author complies with his respective deadlines hereunder, publish the Work within twelve (12) months of receipt of the approved version of the Work and any additional materials to be provided by the Author.
- 9.2** The Publisher shall publish the Work at its own expense.
- 9.3** The Publisher shall have full control of the production, publication, pricing, reprinting and sale of the Work, including by way of example and limitation, the design, format, paper, print run, binding, cover, jacket (if any), advertising and distribution of free copies for the press or otherwise. The Publisher shall consult with and give due consideration to the Author's comments on cover design.
- 9.4** The right to reproduce the typography and design of the Work is reserved by the Publisher.

10. MORAL RIGHTS AND CREDIT

- 10.1** The Author hereby asserts to the Publisher his moral right to be identified as the author of the Work.
- 10.2** The Publisher shall include the name of the Author with due and equal prominence on the cover, jacket (if any), spine and title page of every copy of the Work published by the Publisher and in all appropriate publicity material for the Work and shall impose a similar obligation in respect of any editions of the Work licensed by her.



11. NOTICES

All copies of the Work published by the Publisher shall bear the name and contact details of the Publisher, and shall bear a copyright notice comprising the copyright symbol with the name of the Author as copyright holder and the year of first publication. All copies of the Work shall state that all queries regarding use of the Work shall be directed to the Publisher.

12. AUTHOR WARRANTIES

The Author hereby warrants to the Publisher that:

- i. she is the sole legal owner of the copyright in the Work and has the right and power to enter into this agreement;
- ii. the Work is an original work and will in no way give rise to a violation of any existing copyright or a breach of any existing agreement;
- iii. the Work contains nothing defamatory or libelous and all statements contained therein purporting to be facts are true;
- iv. the Work contains no formula or instructions that would, if followed, cause loss damage or injury.
- v. she has not and will not enter into any agreement or arrangement that will conflict with or hinder their obligations hereunder or compete with the Publisher's exploitation of the Work;
- vi. she shall not commit any act which might prejudice or damage the reputation of the Publisher or the Work or inhibit the successful exploitation of the Work;
- vii. she shall render her services hereunder to the best of her skill and ability and follow all reasonable directions and instructions given by the Publisher.

13. PUBLISHER'S OBLIGATIONS

The Publisher undertakes and agrees:

- i. to make all reasonable endeavours to effectively publish, promote, market and distribute the Work;
- ii. to fully insure all inventory or stock in respect of the Work;



14. DEATH OF AUTHOR

In the event of the death of the Author, the following provisions shall apply:

- 14.1** all sums payable under the terms of this agreement shall be paid to the deceased Author's authorized representatives on any edition in print at the time of his or her death and on any reprints of such an edition.
- 14.2** all sums payable under the terms of this Agreement shall be paid to the deceased Author's representatives on the editions produced subsequent to the Author's death including any reprints thereof, less any fees and/or royalties payable to an editor or reviser in the course of preparing such an edition for press.

15. RECORDS AND ACCOUNTS

- 15.1** The Publisher shall keep full and accurate records of the sale of copies of the Work, and all proceeds and transactions, including payments and collections in respect of its exploitation of the rights granted to the Publisher hereunder.
- 15.2** The Publisher shall provide a statement, in respect of its exploitation of the Work to the Author together with any payment due to the Author under the said statement, on the 15th day of December of each calendar year following publication of the Work.

16. TAXES

- 16.1** All sums due to the Author hereunder are exclusive of any General Consumption Tax, Value Added Tax or similar taxes.
- 16.2** The Publisher may deduct from any amount due to the Author under this agreement, any sum that the Publisher is or may be under a statutory obligation to deduct in respect of any tax, duty or other similar levy.

17. AUTHOR'S COPIES

- 17.1** The Author shall be entitled to receive, on publication, ten (10) free copies of the first and any new edition of the Work and to purchase on normal domestic trade terms further copies for personal use, but not for resale.
- 17.2** The Author may purchase copies for resale at a discounted price (50% off the retail price).



18. PROMOTION

- 18.1** The Publisher shall be entitled to use the name, likeness and biography of the Author in advertising and publicity material solely for the purpose of promoting the Work.
- 18.2** The Author shall agree to make promotional appearances, grant interviews, engage in readings and other activities to promote the work.

19. PUBLICATION PRICE

The Publisher shall, at its sole discretion, determine the publication price for the Work.

20. REMAINDERING

The Publisher shall be entitled, not less than two (2) years from the date of first publication of the Work, to dispose of copies thereof as a remainder at a reduced price and shall pay to the Author the rate of royalty provided for under Clause 2 herein, save and except that where copies are sold at cost or less than cost, no royalty shall be payable.

The Publisher shall give the Author five (5) free copies of the Work under this Clause and the first option for a period of six weeks to purchase copies at a reduced price (50% off the cover price).

21. INFRINGEMENT OF COPYRIGHT

It is agreed that if at any time during the continuance of this agreement the Publisher considers that the copyright in the Work has been infringed by a third party, it shall be at liberty to take such steps as it may, following consultation with the Author, consider necessary for dealing with the matter.

22. COMPETING WORKS

The Author shall not without the written consent of the Publisher write, edit or contribute, jointly or severally, to any work which may be reasonably considered by the Publisher to compete with or prejudice sales of the Work or the exploitation of any of the rights granted to the Publisher under this Agreement.

23. OUT OF CIRCULATION

- 23.1** If the Work shall be allowed to go out of circulation and not be available in any English language edition published by the Publisher or licensed by them, for 10 months, the

Rights to the Work shall revert to the author. The author shall give the Publisher three months notice in writing, prior to the end, or at the end of the 10 months of their intention to circulate the Work to other publishers. For the avoidance of doubt, a Work shall not be deemed to be out of circulation if it is being published electronically and has sales of more than five electronic books within any 10-month period.

- 23.2** Notwithstanding the above, the Publisher shall not be obligated to reprint the Work or licence a third party to do so if, in taking all reasonable factors and options in account, it does not deem it commercially viable to do so.

24. CONFIDENTIALITY

The Author will not disclose, reveal or make public any information relating to the business of the Publisher or this agreement without the consent of the Publisher.

25. INDEMNITY

Each party shall indemnify and keep indemnified the other parties from and against any and all claims loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred resulting from:

- (a) any breach by the party of the warranties or obligations or the terms under this agreement; and
- (b) any act, neglect or default of the party or its agents, employees, or any third party for whom such party could in law be held liable.

26. TERMINATION

26.1 This agreement shall terminate:

- i. at the end of the Term.
- ii. if any of the parties gives the relevant party at least 30 days notice of a breach by the offending party, and the breach is capable being remedied and the offending party fails to remedy such breach within 30 days of being requested by the non-offending party to do so.

26.2 Upon termination of this agreement, all rights in the Work granted to the Publisher by the Author hereunder shall revert to the Author without prejudice to all the rights of the Publisher and any third party in respect of any agreement properly entered into by the

Publisher with such third party prior to the date of such termination and without prejudice to any claim with either party may have for monies due and/or damages and/or otherwise.

27. FORCE MAJEURE

- 27.1** Neither of the parties shall be liable to the other for any breach of obligations arising under or in connection with this Agreement where such breach results directly or indirectly from causes beyond its reasonable control including in such causes, but not by way of limitation, any law, order, regulation, direction of or request of the Government of (name of country) or any other Government or of any supranational legal authority, strikes or other labour difficulties or any industrial dispute; insurrection, riots, national emergency, war, acts of public enemies, fire, floods, hurricane or other catastrophe, acts of God or any similar cause beyond the control of the parties.
- 27.2** If any case of Force Majeure shall continue for a period of ninety (90) days, either party may terminate this Agreement by notice in writing to the other party and such termination shall be without prejudice to the accrued rights and remedies of either party as at the date of termination.

28. NOTICES

Any notice to be given by any party to this agreement shall be in writing and shall be deemed duly served if delivered personally or sent by electronic mail, or by prepaid registered post (airmail in the case of an address for service outside name of country) to the addressee at the address mentioned at the head of this agreement or (as the case may be) the telex or facsimile number of that party.

29. ASSIGNMENT

The Publisher shall be free to assign its rights and obligations under this agreement to another entity and shall provide the Writer with written notification of same.

30. PARTNERSHIP

Nothing in this agreement shall be deemed to constitute a partnership between the parties nor the relationship of employer and employee under a contract of service, nor the relationship of principal and agent.



31. MODIFICATION

This agreement may not be modified except by an instrument in writing signed by both parties or their duly authorized representatives.

32. SEVERANCE

In the event that any of the provisions of this Agreement is declared void, illegal or otherwise unenforceable by any judicial or other competent authority, the remaining provisions shall remain in full force and effect.

33. WAIVER

The failure of the Publisher to enforce at any time or for any period any one or more terms or conditions of this agreement, shall not be a waiver of them or of the right to subsequently enforce all terms and conditions of this agreement.

34. MEDIATION

Any dispute or difference of any kind whatsoever which arises between in relation to any matter in connection with this agreement shall, within thirty (30) days of one party receiving written notification of the said dispute or difference from the other party, be referred to mediation through the (LOCAL MEDIATION BODY N COUNTRY) before an agreed Mediator and at a mutually convenient date and time.

35. JURISDICTION AND GOVERNING LAW

This agreement shall be governed by the laws of COUNTRY OF PUBLISHER, whose Courts shall be the Courts of exclusive jurisdiction.

36. DEFINITIONS AND INTERPRETATION

In this Agreement except where a different interpretation is clear from or necessary in the context, the following terms shall have the following meanings:

- a. "Electronic Form" means any electronic version of the Work and shall include but is not limited to off-line electronic storage and information retrieval systems of a digital, optical or magnetic nature including (by way of example and not limitation) CDROM, compact disc, video, software and hardware platforms for displaying e-books, online transmission by any



means of telecommunication (including but not limited to on and/or via mobile phones and mobile phone applications) and any and all other electronic means of reproduction (including audio), publication, dissemination and transmission whether now in existence or hereafter invented.

- b. “Net Sales” means the amount received by the Publisher and any receivable by the Publisher after deducting any reasonable discounts granted by the Publisher, any advances paid by the Publisher to the Author, and any sales or other similar taxes and duties incurred by the Publisher in respect of all sales of copies of the Work.
- c. “Rights” means all vested contingent and future rights of copyright and all rights in the nature of copyright and all rights, including electronic publishing and subsidiary rights, of whatsoever nature of the Work, including but not limited to the right to print, publish, sell, reproduce, license and otherwise exploit the Work whether in whole or in part, adapted or abridged, in any form, including but not limited to hardcover, paperback and trade paperback book form and in Electronic Form, in all and in all languages throughout the Territory.
- d. “Subsidiary Rights” means the rights in the Work set out in Schedule 1 hereto.
- e. “Term” means the full period of copyright in the Work including all renewals, reversion and extensions of such period subsisting or arising under the laws in each and every part of the Territory and afterwards so far as permissible in perpetuity.
- f. “Territory” means the world.



SCHEDULE 1

SUBSIDIARY RIGHTS AUTHOR %

- a. Anthology and Quotation Rights, being the right 30% to authorize the reproduction in other publications of extracts and quotations from the Work, including any original maps, charts, diagrams, or other illustrations.
- b. Book Club Rights, being the right to licence the Work to 30% book clubs and similar organizations on a separate royalty basis.
- c. Translation Rights, being the right to licence the exploitation 30% of the Work in languages other than English to another publisher.
- d. Reprint Rights, being the right to licence a reprint of the Work 30% to another publisher.
- e. Adaptation Rights, being the right to adapt or to license the right to adapt 30% the Work in any other form not mentioned in Schedule 2 herein save and except that such rights shall not include, graphic novel or comic (serialized or otherwise) adaptation rights.
- f. Non-commercial Rights into Braille or to record the Book Free of Charge the sole use of the blind and print-handicapped free of charge.
- g. Any other subsidiary right not expressly granted herein shall reside with the author



IN WITNESS WHEREOF the parties have hereunto set their hands and Seals the day and year hereinbefore written.

SIGNED for and on behalf of

PER:

PUBLISHER COMPANY NAME

Name

Signature

Date

SIGNED by AUTHOR

Name

Signature

Date

SAMPLE



Sample 2

AUTHOR CONTRACT: African Publisher



Memorandum of Agreement

MADE THIS

XXXXX

BETWEEN

AUTHOR

XXXXXX
XXXXXX

(hereinafter called the AUTHOR, which expression shall, where the context admits, include Authors) on the one part and **name of publisher** (hereinafter called the PUBLISHERS, which expression shall include any publishing imprint subsidiary to or associated with the PUBLISHERS) on the other part WHEREBY it is mutually agreed between the parties hereto for themselves and their respective executors administrators and assigns or successors in business as the case may be as follows:

WHEREAS the AUTHOR has written, ~~compiled or edited~~, a work at ~~present and provisionally~~ entitled:

XXXXXX

(hereinafter called the "Work') now it is mutually agreed between the parties hereto as follows:

LICENCE AND TERRITORY

1. In consideration of the payments hereinafter provided the AUTHOR hereby grants to the PUBLISHERS the sole and exclusive right and license to produce and publish and themselves further to license the production and publication of the Work or any adaptation or abridgement of the Work, or any substantial part of the Work in all editions and in all printed and other forms as set out in this Agreement in all languages for the legal term of copyright in the **World**.

The AUTHOR undertakes that he/she will not during the continuance of this Agreement without the prior written consent of the PUBLISHERS prepare otherwise than for the PUBLISHERS any work of a nature which may reasonably be considered by the PUBLISHERS to be likely to affect prejudicially the sales of the Work.

DELIVERY AND ACCEPTANCE OF TYPESCRIPT

2. An acceptable typescript ~~*shall be/has been*~~ delivered by the AUTHOR to the PUBLISHERS complete and in a condition ready for press ~~not later than *date*~~ together with illustrations and/or other material as agreed between the AUTHOR and the PUBLISHERS ~~as specified in the Schedule to this Agreement~~. The AUTHOR undertakes to retain one copy of the typescript as delivered by him/her to the PUBLISHERS.

The PUBLISHERS shall accept the Work provided that the complete typescript as delivered by the AUTHOR meets the technical requirements of this Agreement and conforms to a reasonable extent in nature, scope and style to the synopsis/specimen chapter/letter either as attached to or specified in the ~~schedule~~/meetings through which the AUTHOR and the PUBLISHERS agreed the nature, scope and style of the Work and as a result of which this Agreement was entered into.

Should the AUTHOR fail to deliver an acceptable typescript by the prescribed date or by such other date as may be agreed by the PUBLISHERS in writing the PUBLISHERS shall be at liberty to decline to publish the Work and if the PUBLISHERS so decline in writing, this Agreement shall terminate subject to the provisos that the AUTHOR shall not be at liberty to publish the Work elsewhere without having first offered the complete typescript to the PUBLISHERS on the terms of this Agreement, and that the AUTHOR if the PUBLISHERS so request in writing shall refund to the PUBLISHERS any part of the advance already paid to him/her.

Should the PUBLISHERS consider that the complete typescript does not conform to a reasonable extent to the specifications set out in the Schedule to this Agreement, then they reserve the right to

reject the Work or to require the AUTHOR as a condition of acceptance to make such amendments as the PUBLISHERS think fit within such reasonable period of time as the PUBLISHERS shall notify to the AUTHOR. If the PUBLISHERS shall exercise such right of rejection, they shall immediately so notify the AUTHOR in writing and cancel the Agreement and all rights in the Work shall revert to the AUTHOR and the PUBLISHERS shall be at liberty to enter into an Agreement with some other person to write a similar Work.

If the PUBLISHERS shall exercise such right to require the AUTHOR as a condition of acceptance to make amendments and if the AUTHOR is unable or unwilling to make such amendments within the reasonable period of time notified to him/her by the PUBLISHERS, then the PUBLISHERS shall be entitled to employ persons competent to make such amendments. Any fees payable to such persons shall be deducted from any sums due to the AUTHOR under the terms of this Agreement.

PUBLICATION, PRODUCTION AND CONTROL OF PUBLICATION

3. The PUBLISHERS shall, unless prevented by circumstances beyond their control, produce and publish the Work at their own risk and expense and with due diligence, within a reasonable time of delivery and acceptance of the complete typescript/signature of this Agreement.

The PUBLISHERS shall have the entire control of the publication; and the paper, printing, binding, cover jacket and embellishments, the manner and extent of advertisement, the number and distribution of free copies for the Press or otherwise, and the price and terms of the sale of the first and any subsequent edition shall be in their sole discretion.

The PUBLISHERS, while taking proper care of the typescript and any illustrative material/camera ready copy for the Work shall not be responsible for any loss or damage to such material while it is in their possession or in the course of production or transit.

WARRANTY AND COPYRIGHT INFRINGEMENT

4. The AUTHOR hereby warrants to the PUBLISHERS that he/she has full power to make this Agreement, that the Work is an original Work, has not been published in any form within the territories covered by this Agreement and is in no way whatsoever an infringement of any existing copyright or license that it contains nothing libellous, that all statements contained therein purporting to be facts are true and that any recipes or formulae or instructions contained therein are not injurious to any user or recipient.

The AUTHOR will indemnify the PUBLISHERS against any loss, injury or damage (including any legal costs or expenses and any compensation costs or disbursements paid by the PUBLISHERS on the advice of their legal advisers to compromise or settle any claim) occasioned to the PUBLISHERS in consequence of any breach of these warranties. The provisions contained above shall survive the termination of this Agreement.

If the PUBLISHERS consider that the copyright in the Work has been infringed they shall on giving notice to the AUTHOR of such infringement be at liberty to take such steps as they may consider necessary for dealing with the matter, and if they desire to take proceedings they shall, on giving the AUTHOR an undertaking to pay all costs and expenses and to indemnify the AUTHOR against all liability for costs, be entitled to use the AUTHOR'S name as a party to such proceedings, but at the same time to control, settle or compromise as they think fit. Any profits or damages which may be recovered in respect of any infringement of the copyright shall, after deduction of all costs and expenses, be equally divided between the AUTHOR and the PUBLISHERS.

PROOF CORRECTION AND INDEX

5. The AUTHOR undertakes to read, check and correct the proofs and to return them to the PUBLISHERS within fourteen (14) days of their receipt, failing which the PUBLISHERS may consider the proofs as passed for press. Costs of all corrections and alterations made by the AUTHOR in the finished artwork and the proofs (artists', copy-editors' and printers' errors excepted) in excess of ten percent (10%) of the cost of origination of the Work shall be charged to and borne by the AUTHOR. Should any charge arise under this Clause the amount may be deducted from any sums which may become due to the AUTHOR under this Agreement.

If in the opinion of the PUBLISHERS an Index is considered to be necessary such Index shall be supplied by the AUTHOR or at the AUTHOR'S expense such expense to be advanced by the PUBLISHER and recovered from any sums due to the AUTHOR under the terms of this Agreement.

PERMISSIONS AND ILLUSTRATIONS

6. The PUBLISHERS shall agree with the AUTHOR the quotation or inclusion in the Work of any textual or illustrative or other material (including photographs, pictures, diagrams, drawings, tables, graphs, or maps) not original to the AUTHOR and the AUTHOR shall provide in writing information sufficient to enable the PUBLISHERS to obtain such material and wherever necessary permission for the use of such material for all languages, territories and editions which are the subject of this Agreement and to make appropriate acknowledgement in the Work.

If illustrative material is to be drawn specially for the Work as specified in the Schedule the AUTHOR shall provide to the PUBLISHERS accurate copy in rough form together with information sufficient to enable the PUBLISHERS to obtain the relevant illustrations in final form.

The authors shall bear the cost of any necessary permission fees for illustrative material including material drawn specially for and included in the Work unless otherwise agreed.

The PUBLISHERS agree to pay to the AUTHOR fifty percent (50%) of all monies received by them for the right to use or reproduce any illustrative material appearing in the Work which is original to and has been provided in a form suitable for reproduction by the AUTHOR.

REPRINTS AND NEW EDITIONS

7. The AUTHOR agrees to revise both the Work and the Index for each new or revised edition when requested in writing by the PUBLISHERS to do so and to supply any new matter that may be needed to keep the Work up to date and shall deliver such new material at such time as after consultation with the AUTHOR shall be notified in writing to him/her by the PUBLISHERS and such new matter shall be deemed to be part of the original Work and paid for by the royalties hereinafter provided. In the event of the AUTHOR neglecting or being unable by any reason to revise the Work or supply new matter where needed at such time as shall have been notified above the PUBLISHERS may procure some other person to revise the Work or supply new matter and may deduct the expense thereof from any sums due to the AUTHOR.

If the cost of origination of new matter or a new or revised edition exceeds Twenty-Five percent (25%) of the original cost of composition and origination the PUBLISHERS reserve the right to pay on all copies sold, of the first impression of not more than copies of such new edition the lowest rate of royalty as provided in Clause 8 or Ten per cent (10%) of the net amount received, whichever is lower.

ROYALTIES

8. Subject to the terms and conditions set out in this agreement, the PUBLISHERS shall pay to the AUTHOR the following payments in respect of all copies of the work sold:

(a) Home and Export Sales

(i) A royalty of **12.5** per cent of the net amounts received.

(ii) Notwithstanding Clause **8 (a) (i)** the PUBLISHERS reserve the right to review and/or revise the royalty percentages indicated, in case of extraordinary circumstances, such as servicing of TENDERS, which cause the PUBLISHER to drastically reduce the price of the WORK, to be eligible for the TENDER award. The review and revision of the royalty percentages shall include, but not limited to, REDUCTION of the royalty percentages or ONE-OFF PAYMENTS in lieu of the royalties.

(b) Special Export Sales

On all copies sold whether overseas or for export overseas at a discount of more than Forty percent (40%), otherwise specified in this Agreement the PUBLISHERS will pay the AUTHOR a royalty of Ten percent (10%) of the net amounts received.

(c) Royalty Inclusive Sales for Export

Whenever a separate Agreement is made for publication of the Work overseas under which copies are to be supplied bound or in sheets on a royalty-inclusive basis, a sum representing Ten per cent (10%) of the net amounts received by the PUBLISHERS shall be paid to the AUTHOR.

(d) Royalty Exclusive Sales for Export

Whenever a separate Agreement is made for publication of an edition/editions of the Work overseas on a royalty-exclusive basis, a royalty of Fifty percent (50%) of all royalties received by

the PUBLISHERS on account of the sales of such an edition/editions.

(e) Small Reprint Sales

On small reprints, the lowest royalty rate as specified in Clause 8(a) or Ten per cent (10%) of the price received, whichever is the lower.

(f) Remainder Edition Sales

If the work shall in the opinion of the PUBLISHERS have ceased to have a remunerative sale, the PUBLISHERS may dispose off any copies remaining as a remainder or overstock. The royalty payable on all copies so disposed of shall be Ten per cent (10%) of the price received except that no royalties shall be payable on copies disposed off at or below cost.

GENERAL PROVISOS

9. Provided that no royalties shall be paid on any copies sold at less than the published price of the regular Kenyan edition when used for publicity purposes, or on any copies given away for review or other purposes, or on any copies lost by theft or damaged or destroyed in transit or otherwise.

Provided that all royalties and other income accruing to the AUTHORS under this Agreement shall be divided among them as follows:

XXXXXX

SUBSIDIARY RIGHTS

10. In consideration of the payment by the PUBLISHERS to the AUTHOR of the following percentages of all monies received by them in respect of the undermentioned rights the AUTHOR hereby grants the said rights in so far as they are not granted by Clause 1 above to the PUBLISHERS within the territories specified in that clause during the term of this Agreement.

(a) Version Rights

(i.e., the right to publish and/or to co-publish and/or to licence publication of a version of the Work at home or overseas for which adaptation is in the reasonable judgement of the PUBLISHERS desirable). Terms to be mutually agreed.

(b) Quotation Rights

Fifty per cent (50%)

(c) Anthology Rights

Fifty per cent (50%)

(d) Digest Rights

Fifty per cent (50%)

(i.e., the right to publish an abridgement of the Work in a single issue of a journal, periodical, or newspaper).

(e) Mechanical Reproduction Rights

Twenty per cent (20%)

(i.e., the right to produce or reproduce the Work or to license the reproduction of the Work or any part thereof by film microphotography, photocopying, gramophone records, tape cassettes, film strips, or by means of any other contrivance for purposes of mechanical reproduction now in existence or hereinafter invented except in so far as reproduction is for use as part of or in conjunction with a commercial film).

(f) Electronic and Software Publishing Rights

Twenty per cent (20%)

(i.e. the right to reproduce or to license the reproduction of any system or program derived from the Work: and designed for sale or for licensing or for use in electronic information storage or retrieval systems now in existence or hereinafter invented).

(g) Translation Rights

Fifty percent (50%)

(h) English Language Reprint Rights

Fifty percent (50%)

(i.e., licensed to another publisher)

(i) Sound Broadcasting

Fifty per cent (50%)

(Single-voice readings from the text of the Work)



(j) Television Reading Rights **Fifty per cent (50 %)**
(Single-voice readings from the text or showing of illustrations from the Work).

(k) Dramatizations and Documentary Rights **Fifty per cent (50%)**
(on stage, film, radio, or television: including transmission by cable, satellite, or any other medium now in existence or hereinafter invented).

(l) Performance Rights **Fifty per cent (50%)**
(m) Non-Commercial Rights for the Visually Handicapped **Nil percent (0%)**

(i.e., the right to convert the Work to Braille or to record the Work for the sole use of the blind and visually handicapped free of charge).

General Proviso

Provided that the exercise of any rights now in existence or hereinafter arising in the Work which are not subject to this Agreement shall be subject to terms to be mutually agreed between the AUTHOR and the PUBLISHERS.

ADVANCE PAYMENTS

11. The PUBLISHERS agree to pay the AUTHOR/AUTHORS in advance and on account of all sums that may become due to the AUTHOR under the terms of this Agreement the sum of (set amount) N/A divided between the authors as follows:

split N/A

INSPECTION COPIES

12. Any sums which may be received in respect of single specimen copies or inspection copies distributed to individual teachers for the purposes of publicity shall be regarded as contribution to the expenses of such publicity and shall not be accounted for as sales.

COMPLIMENTARY COPIES

13. The AUTHOR shall be entitled to receive on publication 6 presentation copies of the first edition of the Work and 4 presentation copies of each subsequent edition of the Work and shall be entitled to purchase further copies at lowest trade terms for personal use but not for resale.

NOTICE OF COPYRIGHT AND NAMING OF AUTHOR

14. The copyright in the Work shall remain the property of the AUTHOR and the copyright notice which will be printed upon every copy of the Work, together with the Universal Copyright Convention symbol, shall be in his name with year of first publication.

The PUBLISHERS undertake that the name of the AUTHOR will appear in its customary form with due prominence on the title page and on the binding cover/jacket of every copy of the Work published by them and further undertake that they shall impose a similar condition on the publisher of any edition of the Work licensed or otherwise authorised by them.

ACCOUNTS

15. The PUBLISHERS shall render accounts of the said Work semi-annually as at April 30 and October 31, and all monies due to the AUTHOR shall be paid to the AUTHOR within fourteen weeks of the said accountancy dates provided, however, that no account need be submitted unless specifically demanded nor payment made in respect of any half year in which the total sum due on the said Work and on any other works by the AUTHOR is less than (set amount) in which case the amount will be carried forward to the next accountancy date.

The PUBLISHERS may in their sole discretion deduct from any payments due to the AUTHOR under the terms of this Agreement any sum or sums which the PUBLISHERS may be under statutory duty to pay in respect of income tax or any other taxation upon any amounts accruing to the AUTHOR in any country or part of the world which is the subject of this Agreement.

OPTION TO PUBLISH FURTHER WORKS

16. The PUBLISHERS shall have the first refusal of the AUTHOR'S next two works suitable for publication for the educational market (and the AUTHOR shall offer to the PUBLISHERS for this



purpose the same rights and territories as those covered by this Agreement) on terms to be mutually agreed. The PUBLISHERS shall exercise this option within one month of receipt of the complete typescript or synopsis, except that they shall not be required to exercise it until two months after the publication of the Work, the subject of this Agreement.

TERMINATION OF THIS AGREEMENT

17. If at any time the PUBLISHERS allow the Work to go out of print or off the market in all editions issued by the PUBLISHERS or authorised by them in the English Language and if within twelve months of having received a written request from the AUTHOR to do so they have not reprinted and placed on the market a new edition or authorised the same then all rights granted under this Agreement shall forthwith and without further notice revert to the AUTHOR (but not those deriving from the option in Clause 16 hereof), without prejudice to all rights of the PUBLISHERS in respect of any contracts or negotiations properly entered into by them with any third party prior to the date of such reversion and without prejudice to any monies already paid or then due to the AUTHOR from the PUBLISHERS.

If the PUBLISHERS fail to fulfil or comply with any of the clauses or conditions set forth in this Agreement within two months after written notification from the AUTHOR of such failure or should the PUBLISHERS go into liquidation other than voluntary liquidation for the purpose of and immediately followed by reconstruction, then and in either event all rights granted under this Agreement shall revert to the AUTHOR forthwith and without further notice, without prejudice to all rights of the PUBLISHERS in respect of any contracts or negotiations properly entered into by them with any third party prior to the date of such reversion, without prejudice to any claim which the AUTHOR may have for damages or otherwise and without prejudice to any monies already paid or then due to the AUTHOR from the PUBLISHERS.

GOVERNING LAW AND JURISDICTION

18. If any difference shall arise between the AUTHOR and the PUBLISHERS touching the meaning of this Agreement or the rights and liabilities of the parties thereto, the same shall be referred to a single arbitrator, in accordance with the provisions of the Arbitration Act of 1995, as any amending statute for the time being in force.

This Agreement shall be governed by and interpreted in all respects in accordance with the Law of the county of the PUBLISHER.

AS WITNESS the hands of the PARTIES:

Sign

XXXXXXXXXX _____

For the AUTHOR (S) (name and signature)

Managing Director
For and on behalf of
PUBLISHER