

Copyright and author rights

November 23, Roger Gillis - Copyright and Author Rights - Dalhousie Libraries Scholarship Series



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Introduction



Roger Gillis

Copyright and Digital
Humanities Librarian
Dalhousie Libraries
Copyright Office

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<https://libraries.dal.ca/copyright>

Common Questions ...

- “My publisher has given me this agreement to sign, I don’t understand it - what do I do!?”
- “I’m trying to determine if I own the copyright to my work
....”
- “I have to make my publication open access according to my granting agency ... how do I do this – am I breaking any copyright rules?”

Learning Objectives

- Have a framework or understanding the nature of copyright ownership and transfer.
- Understand how publishing contracts can act to inhibit authors rights to their works.
- Learn strategies for negotiating with publishers in order to retain rights to publications in order to facilitate dissemination and future use by others.

Caveat: This presentation is not legal advice



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Outline

- What is copyright?
- How does copyright ownership work?
- Retaining author rights
- Common scenarios in academic publishing
- Negotiating rights (Select, Identify, Read, and Negotiate, Post-publication)
- Resources: Author Addendum, SHERPA-RoMEO, Creative Commons Licenses
- Conclusion and Recap

Today's focus: Journal publishing



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What is Copyright?

- Area of law that limits how original works of creators/authors can be used
- One aspect of Intellectual Property law (others include: trademark, patents, industrial design...)
- Grants an exclusive set of rights to users (e.g. the right to: copy, distribute, perform, adapt or otherwise use the work)
- Does not protect facts or ideas (only the expression of those facts or ideas)

Some text altered from Creative Commons Certification course:
<https://certificates.creativecommons.org/cccertedu/chapter/2-1-copyright-basics/>

Criteria for Copyright Protection



- Originality (application of skill and judgement)
- Be in some fixed form (analog or digital)
- Connection with Canada (or other Berne treaty country)

Copyright protection is automatic (from the moment it's fixed)

Photo source: Copyright [CC BY-SA 3.0 Nick Youngson](#) / [Alpha Stock Images](#)

Different types of Rights

- **Economic rights**

- Reproduction/Distribution
- Performance in public
- (first) publication, translation rights

- **Moral rights**

- Protects the reputation of the author & integrity of the work
- Cannot be assigned (but can be waived)
- Rights of Attribution & Association

Moral Rights



Snow v. Eaton Center

Toronto Eaton Centre, facing north.
Photo taken by [IYY](#). Licensed under
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Copyright ownership

- General rule: author/creator of the work is the first owner of copyright
- Organizations: Employers own copyright in cases where employees create works in the course of their duties (exceptions: most university faculty, or where a contract exists stating otherwise)
- Governments (Crown publications): Federal, Provincial, and territorial (not municipal governments)
- Copyright expires (Public Domain)
 - Copyright lasts for a long time (Creator's life+50 years - but possibly more (Gee Thanks, Trudeau!).

Employment & copyright arrangements

- "Work-for-hire" doctrine (most employers)
- Independent contractors / freelancers / volunteers
- University faculty
- Co-authors (joint copyright holders)

Collective agreements: Dalhousie Faculty Association

“Except as dealt with in Clauses 23.05 and 23.06, the Board makes no claim to the copyrights in books, articles and similar material in the print or digital media written or prepared by any Member. The Board makes no claim to the copyright of any work of art, such as painting, sculpture, music or the like, created by any Member. The Board, therefore, undertakes to transfer to those Members who are the authors, and hereby transfers to those Members who are the authors, the copyrights of all material they have created in the print or digital media and in works of art.”

-- Article 23 [DFA collective agreement.](#)

Collective Agreements: CUPE 3912

“Part-Time Academics shall retain ownership of their lectures and any lecture materials exclusively created by them for use in teaching assigned courses unless they have agreed otherwise. Lectures and lecture materials shall not include, among other things, items such as syllabi, course outlines, examinations, tests and assignments.”

Article 23.2 – [CUPE 3912 Collective agreement](#)

Copyright creators and owners

The Creator of a Copyright-protected work is not the same as the owner of a copyright-protected work.

- Copyright can be assigned (economic rights)
- Transfer of ownership must be in writing (print or electronic)

Copyright as Pie



Translation rights

Print distribution rights

Electronic distribution rights

Public Performance rights

And more ...

Photo by [Alex Loup](#) on [Unsplash](#)

Hey! I wanted some of that pie!



Restrictive copyright agreements may prevent authors from doing particular things with their works!

Photo by [Charles Deluvio](#) 🇨🇦 on [Unsplash](#)

Authors may want to ...

- Deposit in a repository (Dalspace)
- Share on your personal website
- With colleagues at other organizations
- Share on an Academic Social Networking Site (e.g. [Humanities Commons](#))

But assigning copyright through restrictive publisher agreements may prevent authors from doing these things...

Copyright and Academic Publishers

Different scenarios:

- Author retains copyright (common in Open Access)
- Non-exclusive
- Author transfers copyright to the journal (Exclusive license)

Negotiating publishing contracts – a “Tug-of-war”?



Hannah and Emma. Photo by Roger Gillis

Steps to take



Photo by [Jake Hills](#) on [Unsplash](#)

1. Select your publication venue

- Look at journal/publishers' copyright policy
- Do they require transfer of copyright? Or certain, rights to be transferred
- If not clear check with publisher/journal

Restrictive Example: American Journal of Occupational Therapy

“Copyright of the journal is held by the American Occupational Therapy Association, Inc. Permission in writing must be obtained from the Copyright Clearance Center to reproduce, photocopy, or post material appearing in the journal. Direct all requests and inquiries regarding reprinting, photocopying, or posting journal material to [Copyright Clearance Center](#).”

Source: American Journal of Occupational Thereapy.

https://ajot.aota.org/ss/about_ajot.aspx

Open Example: Canadian Journal for the Study of Higher Education

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2. Authors are able to enter into separate, additional contractual arrangements for the non-exclusive distribution of the journal's published version of the work (e.g., post it to an institutional repository or publish it in a book), with an acknowledgement of its initial publication in this journal.

Authors are permitted and encouraged to post their work online (e.g., in institutional repositories or on their website) prior to and during the submission process, as it can lead to productive exchanges, as well as earlier and greater citation of published work (See [The Effect of Open Access](#)).

Source: [Canadian Journal for the Study of Higher Education – About.](#)

2. Identify what rights you want

You may wish to re-use and build on your works. For example, you may want to:

- distribute the work to students or colleagues,
- deposit the work in a subject repository (e.g. arXiv) or an institutional repository (e.g. Dalspace)
- re-use portions in derivative works
- share a copy of the work on a research group, departmental or personal website.

These activities are all governed by copyright, and can therefore be restricted by the terms of your publishing agreement.

Keep in mind ...

Are you required to make your research openly accessible? Be aware of any policies or requirements that may impact the rights you need to retain in your publishing agreement, and make sure that the publisher is aware of these requirements.

3. Read, understand, question

Do your best to read and understand what agreement you'll be entering into and how it may or may not work to your advantage.



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4. Negotiate



- Negotiate to retain your rights if necessary
- Publishers do not require all rights to publish your work – publishing – it doesn't have to be “all or nothing.”
- Consult with co-authors (if applicable)

Photo by [Cytton](#)
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When Negotiating ...

- Negotiate to retain certain rights by:
 - communicating your rationale clearly
 - specifically mentioning any policies or mandates that require certain rights,
 - being positive, clear and persuasive,

Remember: Get it in writing!

(Revised contract (signed), Addendum to contract, emails where publisher agrees to certain exceptions)

SPARC Author addendum



SPARC CANADIAN AUTHOR'S ADDENDUM TO PUBLICATION AGREEMENT

SPARC®

THIS ADDENDUM hereby modifies and supplements the attached Publication Agreement concerning the following Article:

(manuscript title)

(journal name)

The parties to the Publication Agreement and to this Addendum are:

(corresponding author, individually,
or if more than one author, collectively, the Author)

(the Publisher)

Info for Authors (CARL) :

<https://bit.ly/2Q0PUB5>

Screenshot of SPARC Canadian Author
Addendum. Source: Canadian Association of
Research Libraries

What if you're not successful?

- Seek out other publication venues
- Try next time!
- Advocate (within your own associations, editorial boards, etc.)

4. After you publish

- Keep a record of any publication agreements
- Consider reclaiming your rights (if applicable)
- Share your work! (As widely as permitted)
 - See [SHERPA-RoMeO](#)

SHERPA RoMEO

Journal:	Canadian Journal of Sociology (ISSN: 0318-6431)
RoMEO:	This is a <u>RoMEO yellow</u> journal
Paid OA:	A paid open access option is available for this journal.
Author's Pre-print:	✓ author can archive pre-print (ie pre-refereeing)
Author's Post-print:	⚡ subject to Restrictions below , author can archive post-print (ie final draft post-refereeing)
Restrictions:	<ul style="list-style-type: none">• If funded by the Canadian Tri-Agency• 12 months embargo
Publisher's Version/PDF:	✗ author cannot archive publisher's version/PDF
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	 Share Alike SA Others can distribute your work only under a license identical to the one you have chosen for your work
	 Non-Commercial NC Others can copy, distribute, display, perform or remix your work but for non-commercial purposes only.
	

Source: SUNY

<https://subjectguides.esc.edu/c.php?g=754755&p=5408909>

<https://creativecommons.org/choose/>

Book contracts

Brianna L. Schofield & Robert Kirk Walker, Eds.

Bridge · Diaz · Hagen · Kuksenkova · Nikogosyan
Samuelson Law, Technology, and Public Policy Clinic

UNDERSTANDING AND NEGOTIATING BOOK PUBLICATION CONTRACTS

<https://bit.ly/2DDKnuk>

<https://www.authorsalliance.org>

Source: Author's alliance. Understanding and negotiating book publication contracts.

Recap

- Dogs shouldn't eat pie (despite what I may have led you to believe ...)
- Understand rules around copyright ownership and how they apply to you as an owner/creator
- Select your publication venue (and according copyright policy)
- Identify rights you wish to retain
- Read, understand, and question copyright agreements
- Negotiate copyright arrangement that works for you
- Use an author addendum (where possible) to retain rights



Questions?

copyright.office@dal.ca

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