

What do you want from your publisher?

An annotated checklist for mathematical authors

Executive summary for authors of research papers in journals

The number of mathematical papers that are stored or circulated as electronic files is increasing steadily. It is important that copyright agreements should keep in step with this development, and not inhibit mathematical authors or their publishers from making best use of the electronic medium together with more traditional media. While most mathematicians have no desire to learn the subtleties of copyright law, there are some general principles that they should keep in mind when discussing copyright for research papers with their publishers.

1. A copyright agreement with your publisher is a bargain struck between his interests and yours. You are entitled to look out for your interests. Most journal publishers have a standard copyright form, and may be unwilling to vary it for individual authors. But nothing prevents you from asking, if you see room for improvement. Pressure from authors may lead publishers to change their standard contracts.
2. Three groups of people have an interest in your paper:
 - a. Yourself and your employer (who may in some countries be automatically the original copyright holder and hence a party to the copyright agreement);
 - b. The journal publisher;
 - c. Users of paper who are not parties to the copyright agreement, including readers and libraries.

One of the main purposes of your copyright agreement is to control how your publisher or you make the paper available to this third group. Publishers will hardly allow individual authors to dictate agreements with libraries. But if you know that a certain journal publisher makes life hard for libraries, you can take this into account when choosing where to submit your paper.

3. There is no ideal copyright agreement for all situations. But in general your agreement should contain the following features:
 - a. You allow your publisher to publish the paper, including all required attachments if it is an electronic paper.
 - b. You give your publisher rights to authorize other people or institutions to copy your paper under reasonable conditions, and to abstract and archive your paper.
 - c. Your publisher allows you to make reprints of the paper electronically available in a form that makes it clear where the paper is published.
 - d. You promise your publisher that you have taken all reasonable steps to ensure that your paper contains nothing that is libellous or infringes copyright.
 - e. Your publisher will authorize reprinting of your paper in collections and will take all reasonable steps to inform you when he does this.
4. Should you grant full copyright to the publisher? In some jurisdictions it is impossible to transfer full copyright from author to publisher; instead the author gives the publisher an exclusive right to do the things that publishers need to do, and these things need to be spelt out in the agreement. This way of proceeding is possible in all jurisdictions, and it has the merit of being clear and honest about what is allowed or required.

The copyright checklist was written by Wilfrid Hodges, was approved and is recommended by the Committee on Electronic Information and Communication of the International Mathematical Union (IMU). The executive summary was endorsed by the Executive Committee of the IMU in its 68th session in Princeton, NJ, May 14–15, 2001.

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A copyright agreement with your publisher is a signed undertaking that he will do or not do certain things, and you will do or not do certain other things. If you are wondering how to get a fair deal in this agreement, you should start by asking what you want your publisher to do for you, and what you are prepared to let your publisher ask from you. The checklist below may help you to make sure that you have not missed any important points.

The agreement is a bargain struck between your interests and those of your publisher. For example both you and your publisher have a common interest in stopping your work being plagiarised by other people. But if your publisher is expected to take plagiarists to court at his expense, he may well feel entitled to redress the balance by asking you for something else that he wants but you may not.

Changes in the law and technology are continually altering the balance between author and publisher. So you shouldn't feel inhibited about telling your publisher if you feel that some change in the copyright form sent to you by your publisher would make it a fairer deal. (Your publisher is not inhibited about changing his form where he feels it's appropriate.) Because of the costs involved, the publisher is more likely to be willing to discuss the contract for a book than for a journal article; but even for journal articles, pressure from authors may lead a publisher to change his standard contract.

So far as possible, we have avoided legal terminology in the checklist. This is for two reasons. The first is to make the points clearer and more direct. The second is that there are still enormous differences between one legal system and another, though the differences are gradually narrowing under the pressure of international trade. For example 'copyright' in the USA and its nearest equivalent in France, 'droit d'auteur', are really quite different concepts; and the German and British legal systems make different assumptions about who is the initial owner of a work. Different legal systems have different ways of delivering the balance that you want.

We assume you are a mathematician and not a lawyer. So how can you draft a clause that gets the effect you wanted? You can start from what your publisher proposes, using your common sense. The points in the checklist below all carry notes about things to look out for, and in several cases we point out things that matter in particular countries. We hope these resources

will be enough for you; if not, you may need to find a friendly lawyer.

P is Publisher (assumed male).

1. Things you might allow P to do

(a) Publish your work.

Make sure that it's clear what the 'work' is, especially if it involves electronic items.

There is also a question whether it is 'your' work. Of course you will know if you stole it from someone. But even if you wrote the paper entirely on your own, you may not realise that your employer can claim ownership of your mathematical work.

In France and Germany this can't arise. But in any English-speaking country you would be wise to check your contract of employment to see what it says about the copyright in works that you wrote as part of your employment, particularly if you are working for a government agency. Be warned also that your contract of employment need not be the end of the story, because the law in different countries makes different assumptions about copyright ownership if your contract of employment is not specific about it. For example in Canada the assumption is that your employer holds the copyright unless your contract of employment says otherwise; though as author you have certain rights over the publication of articles written by you. If you are a US public servant and the work was done as part of your official duties, then there is no copyright in it within the US, though there may be outside the US; if you are in this position you probably know where to seek advice on the matter.

In France it is essential that your copyright agreement says explicitly that P is allowed to publish the work.

(b) Distribute free copies under certain conditions.

This raises no legal problems.

(c) Authorise other people or institutions to publish copies of your work.

For example you probably want to allow offprint services to distribute offprints of your work, and to charge a fee for copies.

- (d) Authorise other people or institutions to make copies of your work under certain restricted conditions.

This is a very important clause. Students and researchers need to be able to make photocopies of your written papers or parts of your books. If your work is electronic, then nobody can load it onto their computer or bring it up on their screen without copying it (from disk or Internet to RAM, from RAM to screen); so for electronic works this clause is absolutely essential.

Usually P takes responsibility for negotiating licences for colleges and libraries; though P may contract this out to an agency. Your contract must give P permission to do this; though P will notice if you ask him to accept a contract that doesn't. You should try to avoid details at this point, because there are many subtleties that you probably aren't aware of. (For example, should electronic access from the college be controlled by password, IP address or domain name?) Librarians and publishers both complain bitterly that the other side often makes unreasonable demands; best you keep out of these fights.

- (e) Authorise other people to make derivative uses of your work, such as reviewing or indexing.

For normal scientific reviewing, fair use or equivalent rules will usually allow the small amount of copying that may be involved. But creating an abstract, or quoting more extensively than is required for purposes of scholarly comment, may fall outside these rules. If you grant P the right to handle such matters, dealing with requests for uses such as these will generally fall to P's "rights and permissions" department.

2. Things you might require P to do

- (a) Pay you.

This normally applies only to books. There are some journals and conference proceedings for which you have to pay P.

- (b) Anything under 1 above.

It's up to P what he will accept along these lines; but he will not usually accept an obligation to publish without a clause that

the work must be of acceptable quality. But in any case you and P have a common interest in having people or libraries buy the work.

- (c) Advertise the publication of your work adequately.

This applies to books rather than journal papers. It is not a thing that publishers will normally accept as an obligation. Nevertheless one does meet authors who have a grievance about the way their work was advertised. There is nothing to prevent you asking for such a clause, particularly if P is one of those charming publishers who threaten to give your book less favourable treatment if you don't go along with their other requests on the copyright form.

- (d) Let you know when other people ask for or are given permission to republish the work.

You can reasonably ask to be informed if a chapter of your book is going to appear in someone's collection; you can't reasonably ask to be informed every time an offprint is issued.

Also P will be a fool to give you a cast-iron guarantee in this clause. By the time P needs to send you the information, you may have left the country and be impossible to trace. Any clause of this kind should require P only to use 'best endeavours' (or some similar phrase) to get the information to you.

- (e) Update the electronic format of electronic material as the advance of technology requires.

You are in uncharted territory here. It is more sensible to require this for electronic material in a standard text format than it is for graphics files that may need some particular software application to run them. P may reasonably insist on a 'best endeavours' clause in any case.

Some publishers say explicitly that they will not patch up your files if these are incompetently written. This is a very reasonable requirement, and you should assume too that P will not sort out the mess if you have used an outdated format (for example an obsolete version of TeX).

- (f) Take legal proceedings against plagiarists.

P would be stupid to accept this obligation without very severe restrictions. Legal proceedings are expensive and sometimes the chance of conviction is low. Also as it stands this is an obligation into the indefinite future (or at least until the copyright lapses, which in North America is normally 70 years after the death of the author); why should P lumber himself with this? You should rest in the knowledge that plagiarism is a threat to P as well as to you.

Note that in most countries P will not be in any position to take plagiarists to court if P doesn't have a legal interest in the work. But the details vary from country to country.

3. Things you might require P not to do

- (a) Alter your work.

By international agreement you as author have a moral right to claim authorship of your work and to object to any distortion, mutilation or other modification of it which would be prejudicial to your honour or reputation. Like all moral rights, this stays with you for ever and it doesn't need to be stated in the copyright agreement; but different countries have taken different steps to safeguard this right.

In any event the moral right is rather vague. You may want to demand something stricter, for example that no change is made in the text of your paper. Don't be surprised if P puts restrictions. For example P has to protect himself against possible libel or plagiarism by you; he may insist on being able to make alterations that are necessary for legal reasons, and he won't want to be delayed by having to check with you first. (This arises particularly with electronic files that P keeps on his website. He can hardly alter journals already delivered to libraries.) In return you can reasonably insist that any such emergency alteration is approved by an academic editor.

Don't be surprised either if P insists on being able to make purely electronic or formatting adjustments; this is reasonable.

4. Things P might want you to do

- (a) Guarantee that the work has not previously been published, and that you are not simultaneously offering it to another publisher.

As it stands, this prevents P from publishing a work of yours which has already been published, even when the person who holds the necessary authority has authorised P to republish. But if P knows that this is the situation and still wants to publish, P will presumably withdraw the clause.

There can be a tricky scenario when the previous publication was on paper, very likely before electronic publication was invented, and the proposed new publication is electronic. Both you and P need to be sure that the previous publisher can't stop you making the new publication. This may depend not only on the text of the earlier copyright agreement, but also on the legal system of the country in question. Unless you are extremely sure of your situation, find the copyright agreement with the previous publisher and show it to a reliable lawyer.

- (b) Guarantee that you are legally entitled to give P the rights that you are claiming to give him.

Caution here. Unless you are *very* sure of the full facts, you should never do more than guarantee that you have taken all reasonable steps to make sure you are entitled.

For example an electronic paper may contain software that some company issued as freeware, but later the company changed its mind and demanded that users of the software should pay for a licence. You (and hence P) may still be legally liable, though you may be able to plead in mitigation that you didn't know about the change. This is very uncommon, but the fact that it can happen at all should warn you to take care with a clause like (b).

- (c) Guarantee that the work contains no libel or other material that shouldn't be published.

You can agree to this more safely than (b), but you should still be careful, particularly in Britain where the libel laws are stiff.

- (d) Include a confidentiality clause, or ask for part of the agreement to be by a verbal understanding rather than a written contract.

There *might* be a good reason for these, but common sense suggests you should be extremely suspicious. If you do have grounds

for suspicion, you might ask for a clause saying that no oral statement should be taken into account apart from the text, which should be taken to constitute the entire agreement.

5. Things P might want you not to do

(a) Publish the work yourself.

This includes keeping the work on a public website after P has published it. If you have given somebody else an *explicit* licence to include it in their website, then in general you can't prevent them keeping the work on their site; but usually in such cases the licence is implicit, so that you can write to the owner withdrawing the licence, and the owner is then obliged to remove the work from the site.

The legal terminology of most countries allows three possibilities.

- (i) If you have given an 'exclusive licence' to P, then this prevents you from publishing the work yourself or authorising anyone else to publish it. P on the other hand can do with your work what you license him to do, and nothing more.
- (ii) If you give P a 'non-exclusive licence', this entitles you to publish the work yourself and authorise other people to publish it; but in this case P may very well ask you to promise not to authorise third parties to publish the work except under strict conditions (see (c) below). Again P can do whatever you license him to do. (Don't be bullied by publishers who warn you that if you opt for this kind of agreement they will be inhibited in disseminating your book. With their agreement, you can license them to do whatever you want them to do.)
- (iii) If you have 'assigned copyright' to P, then all authority over the work passes to P. This prevents you from publishing the work yourself or authorising anyone else to publish it; except that P may give you in return a (non-exclusive) licence to publish under certain conditions. Recently many publishers have been moving towards this arrangement, that you assign copyright but receive a carefully circumscribed exclusive licence, as a way of heading off demands from authors that they should retain copyright. A typical clause of this kind might allow you (1) to make copies for classroom teaching,

(2) to make copies for distribution to colleagues in your own institution, (3) to use the work in later publications of your own (including lectures), (4) to keep the work on your own website.

In Germany (iii) is technically impossible, but German publishers sometimes refer to (i) as ‘transfer of copyright’.

In the US (where the terminology of (i)–(iii) does apply), your legal rights and those of P don’t depend on copyright being registered with the Copyright Office. But if you are a US resident and want to use your copyright as a basis for suing someone, you must have registered; moreover if you want to sue for statutory damages and attorney’s fees, you must have registered either before the plagiarism occurred, or within three months of first publication. In cases (i) and (ii), you hold the copyright and you will need to register it yourself. In case (iii), P holds the copyright and may ask you to state in the contract that you allow P to register it.

(b) Authorise someone else to publish or copy the work.

This has become a real problem, where a publisher holds the copyright on a book that is out of print and is unwilling to republish it (or to republish it with changes that you want to make), though other publishers are willing. So in case (a)(iii) you should consider insisting on a clause that P will agree to grant a licence to another publisher on reasonable terms if the book goes out of print.

If you insist on being able to authorise further publication or copying yourself, bear in mind that for people who want to publish or copy, P may be much easier to find than you, particularly if P is a famous publishing house. You can make yourself a little easier to reach by entering into a collective licensing scheme such as those run by the UK Copyright Licensing Agency or the US Copyright Clearance Center, or any similar Collection Society. Some publishers specifically exclude registration with a licensing agency even if you retain copyright; this is a bit of a cheek and you might want to press them on it.

(c) Publish a revised or upgraded version of the work yourself.

This possibility arises very easily if the work is published electronically; you are bound to be tempted to correct false theorems, and maybe to attach relevant programs when they become available. But it can also arise with printed work, for example if you retain copyright, and then later you allow another publisher to include some of the work in a published collection, and you update the work for this new publication.

If you do retain copyright and P is asking for a restriction of this kind, you will need to agree with P a way of drawing a line between the kinds of revised publication that will devalue P's version unacceptably and those that won't. You are on your own here—there are no standard agreed formulations. (But some may emerge as it becomes commoner for authors to retain copyright.)

- (d) Publish (or authorise someone else to publish) the work without its including an acknowledgment that the first publication was by P, with a full reference to that publication.

This is a common clause in contracts that allow you to publish the work yourself. It seems very reasonable. Sometimes P will require that the acknowledgment is in a suitably prominent place, for example on the first page.

- (e) Revoke the contract.

It's normal to make copyright agreements irrevocable by either party. But if you and the publisher agree, there is nothing in the law to prevent you granting copyright or licence for a limited period or in a restricted area of the world, or simply leaving it open for either party to revoke the contract after first publication.

6. Other considerations

1. Which country's laws apply?

A copyright contract should contain a 'jurisdiction clause' saying what jurisdiction applies; sometimes it does this by saying where the parties can sue. If both publisher and author are in the same country (or the same legal jurisdiction, e.g. a state of the US, or Scotland for example), the law makes the default assumption that the laws of that country or jurisdiction apply. The legal situation is very complicated if publisher and author are in different countries and the contract contains no jurisdiction clause.

2. Define your terms. There are any number of anecdotes about authors getting caught out by not realising how a word in the contract might be interpreted. For example your contract should probably define what it counts as ‘publication’, or avoid the word altogether; otherwise you may find in US law that a free distribution doesn’t count as publication. Your definitions don’t have to agree with some standard legal definition; they do their job if they make clear what the parties to the contract had in mind.

Acknowledgements. My thanks to Eva Bayer-Fluckiger, John Ewing, Susan Hezlet, Gary Lea, Ulf Rehmann, Laurent Siebenmann and Bernd Wegner, for their comments on an earlier version, though they are not responsible for any mistakes of fact or judgement.

Last revised 5 September 2001.

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