Copyright/Book Publishing

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THE CONCEPT AND ESSENTIAL ATTRIBUTES OF A BOOK PUBLISHING AGREEMENT

1. INTRODUCTION

A publishing agreement is a legal contract between an author and a publishing company. The date of publication, the quantity of copies made accessible, and the medium of the work (print, eBook, or both) are typically covered under the terms of publishing agreements. This article examines the definition of a publishing agreement, the essential clauses that form part of such an agreement, and the importance of a comprehensive and properly drafted publishing agreement.

2. DEFINITION OF PUBLISHING AGREEMENT

A publishing agreement is described as a legally binding contract between an author and a publisher or a publishing company. The agreement sets out the essential scope of the work to be published, the publication's objectives, the rights, and responsibilities of the author and publisher, fees and royalties, transfer and restriction of rights, and duration of the contract.

Upon the successful completion of a work, an author contracts a publisher or publishing company to reproduce, disseminate, and distribute the manuscript to the public for monetary value. It is essential for an author who intends to publish his work to execute a carefully organized and well-detailed publishing agreement with a publisher or a publishing company. The agreement protects the author's intellectual property from unauthorized use, reproduction, and distribution of the work and ensures

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that the author's creativity and penmanship is showcased to the society for a considerable monetary value. [2]

A publishing agreement, often referred to as an author agreement or license agreement, sets out the terms and conditions of the publication of a work. The process of publication is regulated by the provisions outlined in the agreement. The author licenses the rights of reproduction and distribution of the work to the publisher thus providing the publisher with the legal authority to publish and disseminate the work. [3]

There are diverse types of publishing agreements that vary amongst publishers. The publishing agreements differ in accordance with the type of work created, such as journals, articles, books, book chapters, research papers, conference papers, or other types of research works.[4]

3. ESSENTIAL CLAUSES OF A PUBLISHING AGREEMENT

The interests of the author and publisher are protected by the provisions stipulated in a publishing agreement. The agreement ensures that the various aspects of the publishing process are extensively captured. The following essential provisions are required to be set out in a publishing agreement prior to the execution of the agreement.

3.1 **Description of the Work:** The work intended to be published must be adequately described in the publishing agreement. The agreement should contain the exact mode in which the work is submitted. The author's manuscript may be labeled with a title, and the context of the subject matter can be summarily described in the agreement. To avoid the editor's miscommunication, publishing errors, oversights, and abandonment of the work, an author must ensure that the work is accurately and completely described in the publishing agreement.[5]

3.2 **Rights grant:** Authors are conferred with the exclusive right to authorize the reproduction and publication of their work.[6] The rights grant is an essential clause in a publishing agreement. The rights granted by the author to the publisher must be

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2 See, Contract Counsel, 'Publishing Agreement: Definition & Scope' available at <https://www.contractscounsel.com/t/us/publishing-agreement#toc-new-agreement> accessed 29 August 2024.

3 See, WIPO, 'Managing Intellectual Property in the Book Publishing Industry' available at <https://www.wipo.int/publications/en/details.jsp?id=255> accessed 29 August 2024.

4 See, Publish drive, 'Publishing Agreement' available at <https://publishdrive.com/glossary-what-is-a-publishing-agreement.html> accessed 29 August 2024.

5 Ferdinand Ezekwe, 'Publishing and Copyright in Nigeria' (2019), *University of Nebraska – Lincoln, Library Philosophy and Practice (e-journal) 2019* available at <https://core.ac.uk/download/pdf/220153749.pdf.> accessed 29 August 2024.

6 See, Section 9 of the Copyright Act.

explicitly and comprehensively stated in the agreement. The volume of rights is captured in this clause. In the case of **Adenuga v. Ilesanmi**, the Court of Appeal emphasized on "the need for written agreement as basis for authority to publish a book".[7] An author may grant the publisher all the rights to the work under the agreement. This is usually done for the publication of journal articles, and it is considered permanent unless otherwise stated in the agreement. However, it is not advisable for an author to grant all the rights to the work to a publisher. An author may grant a non-exclusive license, wherein certain rights are given to the publisher usually the right to publish, communicate, and distribute the work, as well as the possibility of sub-licensing.[8] Also, a non-exclusive license can be granted whereby the author gives non-exclusive rights to various publishers, and the right to first publication is clarified in the provisions of the agreement.[9] The terms of media, territorial limitation, and length of time for publication are described in the rights granted. The right to publish the work in various forms of media such as printed form in hardcover and/or softcover, audiobook, and e-books must be identified in the agreement. Royalty should be specified for each different media.[10]

3.3 **Royalties:** Royalties are the periodic payments that an author receives when a book is sold. The royalty rates are typically determined as a percentage of the book's net revenue (the amount the publisher makes from sales of the book after subtracting production costs should be specified in the book publishing agreement). Authors must bargain for favorable royalty terms because royalties might differ based on the market, the type of book, and the format of publishing.[11]

3.4 **Production and Editing:** The book's production and editing procedures must be specified in the book publishing agreement. In addition to the author's duty to examine and accept the changes and proofs, the publisher may also be responsible for editing,

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7 Suit No. CA/I/49/89; (1991) 5 N.W.L.R. (Pt. 189) 82 at 9. The court held that *"the mere signing of the proof copy of a manuscript could not be a valid and effective substitute for a written agreement that will set out the terms of the transaction for publication such as whether it was an assignment or an exclusive license that was being granted…."*

8 See, Section 30 of the Copyright Act 2022 on the provision for Assignment and Licensing.

9 See, Publish Drive, 'Publishing Agreement' available at <https://publishdrive.com/glossary-what-is-a-publishing-agreement.html> accessed 29 August 2024.

10 Paul Levine, "Publishing Contracts 101 (What You Need to Know to Protect Your Work)" available at <https://www.writersdigest.com/get-published-sell-my-work/publishing-contracts-101> accessed 20th February 2025.

11 See, Contract Counsel, "Publishing Agreement: Definition & Scope" available at <https://www.contractscounsel.com/t/us/publishing-agreement#toc-new-agreement> accessed 20th February 2025.

designing, and typesetting the book. The manufacturing schedule and the repercussions of any delays should also be included.[12]

3.5 **Marketing and Author's copies:** The book's success depends on its promotion and marketing. A book publishing agreement should specify the publisher's marketing and promotion duties, including developing a plan, sending review copies, setting up book signings, and advertising the book both online and off. Additionally, it should list all marketing costs and the persons or entities who are responsible for paying them.[13] Additionally, the manuscript that an author receives for personal use or to sell at signings should be covered by the book publishing agreement. It should outline any limitations on the sale of the author's copies as well as the number of copies to which the author is entitled and the cost of any additional copies.

3.6 **Termination and Term:** The duration of a book publishing contract, which could be for a certain period or until certain requirements are satisfied, is called the term. A publishing agreement should specify the duration, mode, and circumstances in which the publishing contract may end, including mutual consent, contract breach, or insolvency. Delivery of the work, which is a common source of disagreement between the author and publisher, must be explicitly provided in the agreement. Parties to the agreement can stipulate important areas such as length, delivery date, and illustration in a Schedule to the agreement as a functional signal to prevent ambiguities and confusion between the parties.[14] The terms and conditions of the parties should also be clearly stated, including what happens to any unsold copies and the author's reversionary rights upon termination.[15]

3.7 **Intellectual Property and Subsidiary Rights:** In drafting a book-publishing agreement, intellectual property rights should be considered. The agreement should state that the publisher only acquires the rights required for the book's publication and distribution and that the author will always maintain copyright to the work. It should also cover matters pertaining to other types of intellectual property, including trademarks, and any other proprietary rights connected to the book. There are extra rights, such as translation, adaptation of the book to a movie and television series, and merchandise rights, that the author may grant to the publisher. The publishing

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12 See, University of Melbourne, 'Understanding Publishing Agreement' available at <https://copyright.unimelb.edu.au/copyright-and-research/understanding-publishing-agreements> accessed 20th February 2025.

13 See, NYU, 'Basics of Publishing Agreement' available at < <https://guides.nyu.edu/copyright/publishingagreements> accessed 20th February 2025.

14 See, Charles Clark, *Publishing Agreement, A Book of Precedent* Third Edition, New Amsterdam Books, New York. Unwin Hyman Ltd, p. 5.

15 Ibid, 9.

agreement should specify the subsidiary rights that are given to the publisher, the guidelines under which these rights may be used, and any royalties or other payments that the author is entitled to receive in exchange for these rights.[16]

3.8 **Warranties and Indemnities:** These are assurances and commitments that the author makes to the publisher about the book's substance. The originality of the book must belong to the author, and he must have full rights to produce and distribute such work. The author guarantees that the book has not been previously published and is not an infringement of any existing copyright or license, breach of confidence or duty, or privacy breach and does not violate any other right of a third party. The authenticity of the book should be established in the agreement and the author must warrant that the book is free from plagiarism, offensive, obscene, or defamatory materials. Additionally, the author shall indemnify and keep the publisher indemnified against all actions, proceedings, claims, and demands if any of these warranties are broken.[17]

3.9 **Payment Terms and Record of Sales:** A provision as to payment in advance, given to the author before the book's publication, may be included in the book publishing agreement. The advance might be deducted from future royalties that the book makes. Should an advance be granted, the details of payment, including when it will be made and how royalties will be computed and disbursed to the writer, should be spelled out in the agreement. The author might mandate that the publisher should maintain a record of sales in respect of the work and upon a written request from the author, the publisher shall provide a detailed record of sales for examination.

3.10 **Dispute Resolution and Governing Law:** The process for settling disagreements between the publisher and the author, such as arbitration, mediation, or court proceedings, should be outlined in the book publication agreement. It should specify the location and jurisdiction for any court cases pertaining to the agreement. The Publishing Agreement must state the governing laws that will regulate the provisions contained in the agreement.

4. IMPORTANCE OF A COMPREHENSIVE PUBLISHING AGREEMENT

Essentially, the clauses highlighted above form the core basis of a publishing agreement. The author and publisher can insert additional clauses to suit their preference as the provisions of an agreement are inexhaustive and must be in accordance with the contract between the parties. Parties to a poorly drafted publishing

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16 *Ibid*, 6.

17 Ferdinand Ezekwe, 'Publishing and Copyright in Nigeria' (2019) available at <https://core.ac.uk/download/pdf/220153749.pdf.> accessed 24th February 2025.

agreement are faced with various challenges such as unclear rights grant, misappropriation of the payments and royalties, uncertainty of the duration of the publishing contract, and ambiguities in the event of a dispute.

The objective of the essential clauses is to protect the author and publisher's rights. It ensures that the author's work is not used, reproduced, or distributed without the author's permission, and it provides a framework for resolving any disputes that may arise. This is particularly important in today's digital age, where works can be easily copied and disseminated without permission. It also provides clear terms and conditions for the publication and distribution of the work. It outlines the scope of work, objectives, rights, responsibilities, fees, royalties, and duration of the contract, avoiding misunderstandings and disputes. This clarity is essential for ensuring that both parties understand their obligations and can work together effectively for their mutual benefit.[18]

A legally enforceable publishing agreement outlines the terms and conditions of the publication and distribution of a book or other creative work as provided by the parties in the publishing contract. The rights and obligations of each party, such as the publisher's rights to distribute and market the work and the author's rights to their work, are defined in the contract to safeguard both parties. It also lays out the terms of the author's compensation and expectations for the publication schedule and creative process. A publishing agreement guarantees that the publisher and the author are aware of the terms of their agreement to prevent misunderstandings and disagreements.[19]

Furthermore, a good publishing agreement promotes transparency and accountability. It specifies the responsibilities of each party, including the publisher's obligations to distribute and market the work, and it provides a framework for monitoring progress and addressing any issues that may arise. A good publishing agreement is essential for protecting the rights and interests of authors and publishers. [20]

5. CONCLUSION

Writers and publishers may protect their rights and interests by entering into a publishing agreement, which is an essential contract. It establishes the terms and conditions for the publication and distribution of a book or other creative work,

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[18] See, University of Melbourne, 'Understanding Publishing Agreement' available at < https://copyright.unimelb.edu.au/copyright-and-research/understanding-publishing-agreements> accessed 26th February 2025.

[19] See, NYU, 'Basics of Publishing Agreement' available at https://guides.nyu.edu/copyright/publishingagreements accessed 24th February 2025.

[20] Ferdinand Ezekwe, 'Publishing and Copyright in Nigeria' (2019) available at < https://core.ac.uk/download/pdf/220153749.pdf.> accessed 26th February 2025.

safeguarding both parties' rights and obligations. A well-written publishing agreement shields the author's intellectual property from unauthorized use, reproduction, and distribution while ensuring that the author receives fair compensation. It also promotes openness, accountability, and effective collaboration between the parties involved. It is highly recommended that parties should consult with an IP expert for effective guidance during the process of drafting the publishing agreement.

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