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Model Publishing Contract for Digital Scholarship

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Model Publishing Contract Glossary of Legal Terms

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Material breach

If either party fails to deliver on the promises they have made in the agreement, it can be terminated under certain conditions. A “material breach” is a failure to fulfill one’s duties such that the agreed upon purpose of the contract can no longer be achieved. For example, if you agreed to deliver a book-length manuscript on the cultural significance of cat videos, and instead you deliver a sound recording of an opera addressing the same topic, this would likely be considered a material breach of your contract. However, if you delivered a manuscript on cat videos that merely used the wrong citation style, this would likely not be considered a material breach, as it can be corrected and the book could proceed with publication.

Rights reversion

Either via a clause in their contract or a process of negotiation, authors and publishers often agree to have some rights “revert” to the author after a period of time or due to other factors. Exclusive rights previously held by the publisher or other entity are then transferred back to the author, who can choose to exercise them. The Model Publishing Contract contains a clause on rights reversion in order to make this process easier for all parties involved. For more information on rights reversion, see the [Authors Alliance guide to rights reversion](#).

Subsidiary rights

Subsidiary rights are an important part of publishing, entertainment, and media contracts. In exercising a subsidiary right, one produces a different format based on the original work. Translations, adaptations for television or film, and audiobooks are common examples of subsidiary rights. Subsidiary rights can be licensed or transferred to other parties.

Subvention

Payment made to a publisher by an academic institution, scholarly society, foundation, or other entity to support the publication of scholarly works. Commonly used to support first books by new authors, works that are heavily illustrated, or scholarship that was costly to produce. However, subventions can also be used to offset the full cost of production in order to make scholarly works free to read.

Third-party claims

Legal action taken by an entity not party to the original agreement (e.g., not the author or publisher). Examples of third party claims relevant to academic publishing include copyright infringement of someone else’s work, libel, defamation, etc.

Work for hire

Under US copyright law, “work for hire” or “work made for hire” is a technical term which describes works subject to copyright protection that are made by an employee in the scope of their employment. In this situation, the employee does not hold the copyrights to the work.

Rather, the employer owns those rights and is the copyright owner from the moment the work is created. The academy and academic publishing have a long tradition of viewing academic works as the work of their authors, and not as work made for hire. As an academic author, you typically own the rights to your scholarly works; the university or college who employs you does not. This traditional understanding extends to students, as well. Student authors are generally considered to be the rightsholder for works produced in the course of their education (with some exceptions to this for students acting in their capacity as employees of an educational institution).