



COPYRIGHT LICENSE AGREEMENT (WRITTEN WORK) & GUIDE

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1. Overview

An organization's ability to buy and sell property is essential to its long-term life and vitality. Although it does not take up physical space, an excess of intellectual property can burden a company, directing limited funds towards maintaining registrations, defending against third-party claims, or creating and marketing final products. Licensing intellectual property can have an immediate positive effect on a company's finances, generating revenue and decreasing costs. A company looking to obtain a license in property (including written materials) must be sure that the licensor does, in fact, have title to the desired items. A properly-drafted copyright license agreement can help in both circumstances.

A non-exclusive copyright license agreement allows the licensee to use (but not own) the owner's creative works. Licensing can help a company obtain rights needed to sell or manufacture its own products effectively and easily, while lending the licensee an established name and reputation. The marketing efforts made by the licensee will in turn benefit the licensor's works and reputation.

Use the enclosed document to license a copyrighted written work for use by another party. You can provide detailed information about how the material will be used and the extent of its incorporation into a publication or other work. The copyright holder will know that its rights are protected, and the licensee will be well on its way to getting rights to material needed to complete its work.

2. Dos & Don'ts Checklist

- A copyright is a form of protection provided by federal law to creators of "original works of authorship." This includes literary, dramatic, musical, and artistic works, both published and unpublished. The author of a copyrighted work can prevent others from copying, performing, or using the work without its consent. Because of this, any third party intending to reprint a portion of the copyrighted work must first obtain the permission of the Licensor. Failure to do so could result in a lawsuit and substantial fines.
- Note that in copyright law, an exclusive license essentially works as a transfer of ownership rights. The exclusive licensee has the right to use the copyright, assign it to a third party, or sue a third party for infringement. A non-exclusive licensee also has the right to use the copyright, but neither of the other two rights.
- Not every use of another person's copyrighted material will be considered a copyright violation. There is a concept in American copyright law called "fair use," which allows third parties to use copyrighted works without permission if that use is for purposes of criticism, comment, news reporting, teaching, scholarship, or research. There are other factors involved in assessing whether unauthorized use is fair use (including the purpose of the use, the nature of the copyrighted work, the amount used, and the effect of the use on the market or value of the copyrighted work), and it's not always an easy or clear determination. The best practice is to obtain permission from a copyright holder in every context, rather than risk the damages and costs that could result from a lawsuit.

- Another type of material that does not require permission to republish is work existing in the public domain. A work in the public domain is not simply a work that is publicly available; it is a work that is either not currently or never was protected by copyright. Public domain works generally fall into one of the following categories:
 - General information (e.g., facts or numbers)
 - Materials created by the U.S. government
 - Items that had copyrights that expired because of time or because the holder didn't renew the copyright
 - Materials created before 1989 that lacked proper copyright notices

- Determining who holds the copyright in a given work can be complicated, but there are certain basic steps that can help in most situations. If you are using material initially published in a book, the copyright holder may be listed on the page after the title page. If you are using material initially published in a journal or periodical, contact the publisher of the work (which usually owns the copyright in all of that work's contents). Information on the publisher of a journal or periodical can usually be found in the masthead. If you cannot find information on the copyright holder of the material you wish to reprint, contact the U.S. Copyright Office or review the archives available on its website (www.copyright.gov).

- A copyright license is typically accomplished through a contract, like the written agreement form that follows. Although not technically required, licenses can also be recorded with the U.S. Copyright Office (USCO) to provide notice of the document's existence. The advantage of this recording is that it provides a public record of the license and may establish priority rights if there is a dispute about whether or not a transfer is valid. No special forms are needed for recordation, although the USCO does encourage registrants to use a "Document Cover Sheet" to facilitate such recordings. If you decide to file a Document Cover Sheet, provide at least two (2) copies of this form with the license itself. There will be a fee for this recording (currently \$95 for each title).

- A copyright license does not have to be forever and does not need to be a complete or exclusive license. You can grant a transfer for a specific period of time, in a specific area, or for a specific medium (e.g., allow online use but not film use).

- Both parties should review the completed agreement carefully to ensure that **all relevant deal points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.

- Sign at least two copies of the agreement, one for you and one for the other party.

- It's a good idea to have the agreement notarized or witnessed. This will limit later challenges to the validity of a party's signature.

- If your agreement is complicated, or if you don't understand its uses or requirements, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Copyright License Agreement (Written Work) Instructions

The following provision-by-provision instructions will help you understand the terms of your agreement.

The numbers and letters below (e.g., Section 1, Section 2(a), etc.) correspond to the provisions in the contract. Please review the entire document before starting your step-by-step process.

- **Introduction of Parties.** Identifies the document as a copyright license agreement. Write in the date on which the agreement is signed. Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., “Licensor”) that will be used throughout the agreement. As you probably guessed, the Licensor is the party that owns the copyright and is giving permission (or “license”) to use the underlying material and the Licensee is the party that asked for permission to use that material.
- **Recitals.** The “whereas” clauses, referred to as recitals, define the world of the agreement and offer key background information about the Parties. In this document, the recitals include a simple statement of the intent to license rights in the Material.

In the space provided, give specific details about the Material that will be reprinted. Include reference to the chapter, page, line opening and closing words, and approximate number of words. If you want to enclose a copy of the Material for the Licensor’s convenience, keep the bracketed clause and attach a copy to the Agreement as Exhibit A. If you do not intend to do so – or if it isn’t necessary because of information you’ve already provided – delete the bracketed words.

- **Section 1: Grant of License.** The extension and acceptance of the license of the copyrights (and therefore the right to reproduce and distribute the Material). Use the space provided to describe specifically where the Material will be published and how it will be used.
 - (a) Write in the title of the publication that will reprint the previously-published Material. Include any additional information about the author, editor, or compiler of the new work, and the publisher and its address. Write down the publication type (e.g., trade edition, paperback, hardback, CD-Rom, DVD, Intranet, magnetic media, etc.) and as many other details as possible about the new publication. For example, consider providing relevant information about:
 - Publication date(s)
 - Expected retail price
 - Total expected sales (or distribution) for the (edition of) publication
 - No. of pages (entire publication)
 - No. of pages (requested material)
 - No. of printed copies
 - Circulation (e.g., countries, special markets, etc.)
 - (b) Describe how and where the Material can be used. For example, will the Licensee be allowed to perform the Material? Use it in advertising? Be sure to include any relevant limitations on how the Material can be used.

- **Section 2: No Assignment or Transfer.** Unlike an assignment, in which an owner’s entire interest is transferred to the buyer, this Agreement gives the Licensee only specific, listed rights. The Licensee is not permitted to resell or transfer its rights, which are only partially and temporarily provided. This section reiterates that fact, and requires the Licensee to obtain the Licensor’s written permission if it wants to do an assignment or transfer.
- **(Optional) Section 3: Territory.** Delimits the geographical area in which the Licensee can use the Material. This is an optional section and gives the Licensor the ability to further restrict the rights it is giving to the Licensee. If this section is not included, the Licensee (subject to the terms of the Agreement) will be able to use the Material without any physical restrictions (i.e., anywhere it wants). If you remove this section, correct the section numbers and the references in the document.
- **Section 4: Restrictions.**
 - (a) Limited Use. Allows the Licensee to use the Material only in the ways specifically stated in the Agreement. Any use beyond that is considered against the law.
 - (b) No Modification. The Licensee can’t revise the Material in any way.
 - (c) Right of Review. The Licensor can review an entire Collective or Derivative Work if the Material constitutes more than 10% of that work. Feel free to increase or decrease this percentage amount to better suit your agreement.
 - (d) Limitations on Transfer. Reiterates that the transfer is of certain rights only.
- **Section 5: Credit and Samples.**
 - (a) Credit. Allows the Parties to specify how the Licensor will be credited on the Licensee’s use of the Material. Use the space provided to show how you want the copyright credit to look (e.g., “Reproduced with permission from [Licensor] [Book/Title/etc] ([Year]). Copyright [Year], [Licensor].”)
 - (b) Credit of Licensor in Collective or Derivative Work. Explains that credit must still be given to the Licensor or the author in any publications that use the Material as a jumping off point.
 - (c) Copy of Collective or Derivative Work. The Licensee must give the Licensor a copy of any Collective Work or Derivative Work to show it didn’t go beyond the terms of the Agreement.
 - (d) Copies of Advertisements. The Licensee must give the Licensor two copies of any ads used to promote the Material.
 - (e) Copy of Critical Work. The Licensee must give the Licensor a copy of any writing that criticizes the Material if that criticism is going to be a part of the final Collective Work or Derivative Work.
- **Section 6: Fees.** In most agreements, each party is expected to do something. This obligation may be to perform a service, transfer ownership of property, or pay money. In this case, the Licensee is giving money (sometimes called “consideration”) to be able to use the Licensor’s property. There are two options provided and you should select the one that best suits your arrangement. In the first, the amount the Licensor receives will be directly tied to the Licensee’s sales. This is more applicable to a large commercial venture and may not be appropriate for small journals or other limited editions.
 - License Issue Fee. This subsection provides for an initial payment by the Licensee for the ability to use the Material. Enter the amount of this first payment.

- Royalties. This is the meat of the payment that the Licensor will receive under this Agreement, if it selects the first option. Essentially, the Licensee will pay a percentage of every sale it makes using the Material to the Licensor. You can change this to be a per-unit royalty (i.e., a set fee every time a sale is made) or make the percentage rate variable (e.g., increasing over time based on an assumption that sales will increase over time). This is a matter of negotiation between the Parties and you should discuss which arrangement will best suit you. If you select the model provided, enter the percentage that the Licensee will pay to the Licensor on these sales. The royalty payments are scheduled to be reported and paid quarterly under the terms of this subsection. If you want these payments to be more frequent (e.g., monthly), change this sentence to fit your agreement.
- Minimum Royalty. To make sure the Licensor receives at least something every year in exchange for its agreement to let the Licensee use its Material, this subsection establishes a minimum annual payment. Enter the amount of the minimum you want to establish. Note that if this payment is not made, the Licensor has the right to terminate the Agreement.

In the second option, the Licensor will receive a set payment in exchange for the license it's providing. The Parties can make this a one-time lump-sum fee or a set of installment payments made over time. A set fee structure will limit the amount of reporting and book-keeping that need to be done on both sides, but may or may not be as lucrative for the Licensor. You can also choose to designate when this flat fee will be paid (e.g., on the date the Agreement is signed or the date on which the Material is republished, or some other designated date).

Select the option that best suits your arrangement and preferences, and delete the other.

- **Section 7: Maintenance of Records and Audit Rights.**

- Books and Records. Requires the Licensee to keep accurate books and records about sales made pursuant to this Agreement. This is particularly important when the Parties have decided to compensate the Licensor with royalty payments. To make sure that the Licensor is receiving its due share of the sales the Licensee makes of a work that incorporates the Material, it is given the right under this subsection to review the Licensee's books.
- *(include only if select Option 1 in Section 6)* Underpayment of Royalties. Indicates that if the Licensee pays less than what is due in royalties, it will be required to pay that amount with interest to the Licensor.
- *(include only if select Option 1 in Section 6)* Overpayment of Royalties. Indicates that if the Licensee pays more than what is due in royalties, it is entitled to deduct the amount of the overpayment from future royalties owed. If the overpayment came at the end of the term of the Agreement, the Licensor will simply return the money to the Licensee.

- **Section 8: Delivery of Material.** Allows the Parties to specify how the Material will be provided to the Licensee. You may select as many of these as you want.

- **Section 9: Ownership and Use of Material.**

- (a) Ownership of Work. Reiterates that the Licensor is the owner of the copyright in the Material, and that no transfer of that ownership is taking place under this Agreement.

(b) Validity of Registrations. The Licensee's acknowledgment that the copyright registrations in the Material are valid.

(c) Limitation on Actions. States that the Licensee will not challenge the Licensor's copyright registrations, or help a third party make a challenge against them.

- **Section 10: Representations and Warranties.** Each Party's promises that certain things are true (or will be true) to motivate the other Party to enter into the Agreement. The first three relate to both Parties: essentially, both are stating that they have the right to enter into the Agreement and that doing so won't violate any contract they're a part of. The second section relates to the Licensor's promises about the material being licensed. More specifically, the Licensor is swearing that:

10(A): it is the only person or company that has the authority to license the Material.

10(B): it can give permission to use the Material. Note that there is an exception carved out for any writing or quotations embedded in the Material. If there is any such writing, separate permission will need to be obtained from the author or Licensor of that embedded material.

10(C): the Material is not copied from anywhere, and has not fallen into the public domain (either because of failure to maintain the copyright or by expiration).

10(D): it has not already sold or transferred all of its rights in the Material to any third party.

10(E): does not believe that the Material has been taken from any third party without authorization (e.g., deliberate plagiarism of another writer's work).

10(F): does not know of any permissions that have to be obtained in order for the license to be granted. In other words, once the Agreement is signed, the grant will be effective without anyone else's input.

10(G): the Material wasn't created while the creator was employed by a third party. In many cases, if an individual was employed by a company and came up with certain material, the company will own that material. This section offers assurance to the Licensees that there are no companies that will make that claim about the Material.

If the Parties want to include additional representations and warranties, you can do so here.

- **Section 11: Documentation.** This section relates to the recording of the Agreement with the U.S. Copyright Office. Recording here simply means sending a copy of the Agreement (together with a cover sheet) to that agency. The Agreement is valid even if you don't record it. However, providing notice that the Licensee has the right to use the Material can protect it from infringement claims or claims by third parties licensees that they did not know about any other party's rights.
 - Recordation. The Licensor's promise to help with any paperwork needed to complete or record the license (e.g., filing information about the license with the Copyright Office). The bracketed phrases make the additional promise that the Licensor will help with paperwork for filings outside of the country. If this is not relevant to your agreement, delete the bracketed phrases.
 - Licensee Assistance in Maintaining Copyrights. The Licensee's promise that it will assist the Licensor in maintaining the copyright registrations of and in the Material.

- **Section 12: Indemnification.** A description of each Party's future obligations if the Material is found to infringe on a third party's rights. There are two options provided and you should choose the one that best fits your situation. In the first, the Licensor takes all responsibility for infringement, promising to pay all expenses and costs relating to the claim. In the second, the Licensor makes its responsibilities conditional, greatly limiting its obligations if a claim is brought. Select only one of these options, and delete the other.
- **Section 13: Termination.** Explains that some actions or events, including certain wrongful actions on the part of the Licensee, will cause the Agreement to end early.
 - (a) Termination Procedures. Note that there are specific actions that will automatically terminate the Agreement. These are all actions that relate specifically to the Licensee's use (or non-use) of the Material, and this provision allows the Licensor to maintain control over (and protect the value of) its property.
 - (b) Effect of Termination. Provides that after the termination of the Agreement for any reason, the Licensee must stop using the Material, any Collective Work, or any Derivative Work. If there are already printed books or periodicals, the Licensee can sell those for a certain period of time. Enter the amount of time the Licensee has to make those additional sales. Note that there is an optional bracketed provision, which is applicable only if you selected the royalty form of payment in Section 6. This provision says that should the Licensee sell existing preprinted Materials, Collective Works, or Derivative Works, the Licensor gets royalties from those sales. Delete this clause if it doesn't suit your arrangement.
- **Section 14: Successors and Assigns.** States that the Parties' rights and obligations will be passed on to successor organizations (if any), or organizations to which rights and obligations have been permissibly assigned.
- **Section 15: No Implied Waiver.** Explains that even if one Party allows the other to ignore break an obligation under the Agreement, it does not mean that Party waives any future rights to require the other to fulfill those (or any other) obligations.
- **Section 16: No Agency Relationship.** Explains that the Parties are not in an agency relationship or any other relationship except for that of a licensor and a licensee. This is an important legal distinction, and is emphasized in this Agreement so that additional obligations are not pushed onto the Parties by law.
- **Section 17: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Licensee and the Licensor.
- **Section 18: Governing Law.** Allows the Parties to choose the state laws that will be used to interpret the document. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write the applicable state in the blank provided.
- **Section 19: Counterparts / Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the Parties sign the Agreement in different locations or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.

- **Section 20: Severability.** Protects the terms of the Agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting choice-of-law clauses, it will not undo the entire Agreement. Instead, only the section dealing with choice of law would be invalidated, leaving the remainder of the agreement enforceable.
- **Section 21: Entire Agreement.** The Parties' agreement that the document they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 22: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the agreement.

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Form Sample

COPYRIGHT LICENSE AGREEMENT (WRITTEN WORK)

This Copyright License Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between _____, a _____ [individual/corporation/partnership/etc.] (the "Licensor"), and _____, a _____ [individual/corporation/partnership/etc.] (the "Licensee," and together with Licensor, each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Licensor (i) has registered or (ii) has applied for the registration of that copyrightable work of authorship more particularly described as follows:

(the "Material") [a copy of which is attached as Exhibit A hereto and made a part hereof by reference]; and

WHEREAS, the Licensor owns all rights in and to the Material and retains all rights to the Material that are not transferred herein, and retains all common law copyrights and all federal copyrights that have been, or that may be granted by the Library of Congress; and

WHEREAS, the Licensor has the [exclusive] right to license others to produce, copy, make, or sell the Material;

WHEREAS, the Licensee wants to obtain, and the Licensor is willing to grant, a license authorizing the use of the Material in the following manner: _____
Works and/or Derivative Works and/or Derivative _____