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## UNIT 9 PUBLISHING RIGHTS AND CONTROLS

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### 9.0 AIMS

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In this unit we shall be introducing you to the concept that whenever somebody creates a work (here manuscript for publication), he or she has the right to decide how it should be used and the benefit (monetary otherwise) that she or he should get out of the work. According to D.N Malhotra in **Book Publishing: Principles and Practices**, "Normally speaking, a when a publisher commits to publish a manuscript in a situation, he means it seriously and tries his best to publish the book on time. But, sometimes, it takes a longer time due to unfortunate circumstances. But then the publisher should take the author into confidence and tell him about the reasons for delay."

The author's anxiety to be published in the earliest possible time and the publisher's similar anxiety to publish are both understandable. This creates a situation where hurry may cause avoidable problems.

Therefore, in this unit we shall tell you about some precautions both must take before making any commitments and try to tell you how and why these are necessary.

Without losing any more time, let us begin by referring you to the issue of Copyright (which has already been covered in the previous units). That creators of literary and artistic works need to have their rights protected is well-acknowledged in the publishing field. In point of fact, even unpublished PhD theses are copyright –this is an issue which is not clear to most laymen. Protection of the rights of the owner of the creator and the interests of the users is the reason why most countries have laws relating to IPR –Intellectual Property Rights.

It is however, is not necessary that an author is aware of his rights—which does not therefore mean that the rights are not there. Then, if a publisher has invested time, money or other resources then he too should be compensated adequately and appropriately. Similarly, if someone has edited the work, he too should benefit from his labours.

We shall tell you of the rights of the author vis-à-vis his work and the nature of controls he can exercise when giving his mss to be published.

At the end of this unit, you would be able to describe the various rights of the different stakeholders in the publishing process and the reasons why these rights are there.

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## 9.1 INTRODUCTION

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When the author of a work approaches a potential publisher, he or she is not necessarily aware of the rights that accrue to him as the creator of the work, as we have just pointed out. (There is of course the situation when he has himself been approached by the publisher with an idea for a book and been commissioned to write the book. For the moment we shall not be talking of the second situation.)

The publisher and the author of the mss both make investments of time, money and other resources in order that the raw mss is turned into a book.

“Publishing has an added value chain from the author to the publisher to the book seller and finally to the reader” says Robert E Baensch in the *Introduction* to SK Ghai’s book **One to One: Glimpses of the Indian Publishing Industry**. This is to say that while the author should be the person to benefit, logically speaking, from the work he has created, the issue is in reality, not so clear cut and has many ramifications since all the parties involved in the publishing process have made various investments that need to be recovered.

But, does an author really know something about the publishing process or does he imagine that all he has to do is to give the mss to a publisher and he will get a book in hand, by magic? You will be surprised to learn that many authors do not quite know or appreciate the nature of changes a mss undergoes during the printing and publishing processes before emerging as the book in hand.

You therefore, need to tell him a bit about what happens to his mss before it becomes a book so that he can take informed decisions about the final look of his book. This is in the interests of both you as publisher and of the author as creator of a work.

### Steps an author may expect to be involved in during the publishing process

1. Throughout publishing process, he will collaborate with the in-house professional who works to ensure that the author’s gets translated into an appropriately designed book. The author, especially if he is a first-time author needs advice and support and some amount of creative control over all aspects of his book.
2. If he is experienced, he would like to decide what is best for the project, and requires that the publisher designs the book around his ideas. He may need to speak directly with a book design team. He may have an idea about the binding, the cover design, the paper, the format etc or he may be a total novice.
3. During the discussions, the publisher’s representative can verify all information about the book, select a book size and discuss ideas with the experienced author or gives suggestions along with expected costs to the novice

4. Ideally, the author should also speak directly with the book designer, who is responsible for the layout and interior design of the book throughout the production process.
5. After reviewing the manuscript, the book designer will collaborate with the author to choose the most attractive and readable design for his book.
6. Once the book is designed, the publisher sends the author, the galley proofs to review. As soon as these are returned the publisher should make any revision requested and, if necessary, send a second galley.
7. This process will continue until the author approves the content and look of the book.
8. Once the author has approved the galley and cover, the publisher will place the book on the printer's production schedule.

Then the publisher should be able to come to a cordial agreement with the author. In case the author does not know his rights, he needs to be told a bit about them by a responsible and ethical publisher.

He needs to make the author aware that he has **rights** and can exercise **controls** over the publication of his work.

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## 9.2 RIGHTS IN COPYRIGHT

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There are two types of rights protected by copyright:

- a) **Economic rights**, which allow the owner to derive financial reward from the use and exploitation of the work. The owner of copyright in a protected work may use the work as he wishes—but not without regard to the legally recognized rights and interests of others—and may exclude others from using it without his authorization. Right of Reproduction and other associated rights and Translation and Adaptation Rights, Performing Rights, and Broadcasting Rights come under the head of **Economic Rights**.
- b) **Moral rights**, which highlight the personal link existing between the author and his work are independent of the usual economic rights and they are to remain with the author even after he has transferred his economic rights.

(Matter taken from MIP—004 **Copyright and Related Rights**, Block 1: **Copyright: An Introduction**, © IGNOU, 2004)

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## 9.3 SOME ASSOCIATIONS

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Since there are a variety of professionals involved in the publishing process, there are naturally associations that have been formed over the years to look after the interests of these various groups. You may find many more than the ones we have listed below. The list is only indicative and not exhaustive.

- In 1973 the **Federation of Indian Publishers (FIP)** formed a special cell in cooperation with the **Authors Guild of India** called the **Good Offices Committee of Authors and Publishers**. The purpose was that those whose copyright has been infringed upon could approach this committee to resolve issues between authors and publishers.
- Some other Associations that may be relevant to our discussion are:
- **Association of Publishers in India (API)** was incorporated in the year 2001 and was registered under the Indian Society Act as a Society (Registration no.

S40098). API is a representative body of foreign publishers to deal with all matters pertaining to the promotion and advancement of the foreign publishers having a presence in India and to protect the common interests of members and professionals engaged in Global Publishing in SAARC Countries.

- **The Association of Indian Magazines (AIM)** is the first industry representation for magazines in India.
- **The Federation Of Publishers' And Booksellers' Associations In India**
- **Association of Writers and Illustrators for Children**
- **Federation of Indian Publishers**

(You may look up the respective websites of these associations for further information.)

Protection of the rights of the members and documentation of the processes of law that have created these rights are some of the reasons that these associations exist. Anticipating situations (in the future) when such rights as have not yet been envisaged, is another issue that these associations concern themselves with, from time to time.

#### Activity 1

Look up the various associations of professionals involved in the publishing industry and maintain a record for your own use when you enter the publishing industry.

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## 9.4 AUTHOR'S GUILD OF INDIA MODEL CONTRACT

In **Authors And Publishers: Love-Hate Syndrome**, G.S. Jolly has given an "Authors Guild of India Model Contract" which lays down a Memorandum of Agreement. This covers:

- Duty of author to supply mss
- Right of Publisher to decline to publish in the event of author's inability to supply the mss
- Right of author to terminate the agreement if the publisher fails to publish by xx date
- Publisher's duty to prepare the mss for printing and author's role is this.
- Undertaking by author regarding copyright materials
- Duty of author to supply the illustrations etc.
- Preparation of index (who will prepare and who will bear the cost )
- Right of author to receive "true copy of print order of the work"
- Price of book
- Royalties

- Rendering of accounts by publisher
- Reprint of work
- Remainders of unsold copies
- Duty of author to update work
- Publisher not to adapt or abridge the work in various (to be specified) ways
- Registration of work within three months of signing agreement or before publication of the work.

**Activity 2**

Discuss with other learners at your counselling session what is legitimate and what is unfair from the point of view of the publisher and list what you feel.

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## 9.5 PUBLISHING RIGHTS AND CONTROLS

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(Since there is a separate unit on Publishers’ Contract, and yet another on Editor-Author-Publisher Relationship in this Programme, we shall concern ourselves here with the Author’s Publishing Rights and Controls only.)

As you can immediately see, any agreement drafted by the Authors’ Guild will be slanted in favour of the author and may be different when drafted by a Publishers’ Guild.

According to Donna Ghelfi, (**Intellectual Property: Issues In the Publishing Industry**, ed S K Ghai, Institute of Book Publishing, 2008), “In its intention to give an individual the choice of how to exercise his/her rights, i.e. to reserve all rights or to dedicate all transferable rights in the work to the public domain, copyrights regimes also provide certain rights...and to protect authors from unreasonable commercial exploitation. Such rights include the non-transferable ‘moral right’ where the creator or performer is acknowledged.” We have discussed the moral rights in the preceding section.

The common interest in the publishing process is, or should be, that the final product, the book, should sell and that each of the stakeholders in the publishing process should stand to benefit—both monetarily and otherwise. However, book publishing is a business after all, and therefore problems may arise, if the issues of finance are not put down in black and white at the very beginning of the publishing process.

So what do we mean by ‘Controls’? **Author control** is as important as remuneration for authorship. That is to say, the ability of the authors to control their use of their copyright material should form the basis for any discussion with the publisher of rights and remuneration. The way to exercise control is to use the services of a professional (lawyer) who could prepare a document that could serve as **ADDENDA** to the standard **Publishers Copyright Transfer Agreement**.

As you work your way through this programme, you should keep in mind that much of what goes on in the interactions between author and publisher is based (or should be based) on goodwill—for after all, nether the publisher nor the author can exist

independent of the other. You may immediately think of the DTP process as the author's alternative, but remember that the DTP is very costly if a number of copies are required and if this work is to be sold, the publisher alone has the infrastructure for marketing, sales and distribution. In any case, the DTP process results from the Word processing process, not the page making one.

The worst kept publishing secret is the mutual distrust between the author and the publisher. The author feels that he publisher does not reveal the true print run when the publisher is often genuinely unaware of what the final print run of a book is going to be (at the time of signing the contract).

These are some of the points when relationships can sour.

- Number of copies to be printed
- Number of copies actually sold
- Growing importance of electronic rights
- Author's controls over both present and future rights (particularly e-rights).
- It is therefore necessary that authors and publishers spend some time discussing these and then putting them down in writing even though neither wishes to show that they are suspicious of the other.

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## 9.6 GRANT OF RIGHTS

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In a Publishing Contract, the "grant of rights" is a ticklish issue. The author may decide to trust the publisher and grant him all the 'exclusive rights and interests' or very controlling and include a single, specific use. The publisher needs to be very cautious because he does not wish to violate any copyright and lay himself open to legal action.

A good solution could be to specifically include electronic rights in the clause and to even include a 'future technology' clause such as "All rights reserved. No part of the of this publication may be reproduced in any form without the prior written permission of the publishers'. (It may be interesting to note that here the author himself is the copyright holder!).

However, both the per perspectives are valid- balance sheet verses social responsibility since publishing is both a commercial and a cultural activity (Jolly, **Book Publishing: Theory and Practice**, Har-Anand Publications Pvt Ltd . 1999, G S Jolly, p.24).

To quote Rich

"If the publisher desires to control the electronic rights the authors work, certain that the publishing contract is very clear regarding the intent of the policies concerning the exploitation of their rights.

### 9.6.1 Primary and Subsidiary Rights

Normally, Primary rights mean the publication of soft cover or hard cover books and the reprints of these. The rights of translation, serialization, special editions and other unanticipated rights are in a fuzzy domain—are these in the primary or the subsidiary area?

Subsidiary rights are rights that derive from the publishing or the book form. These include electronic rights, motion picture, television, audio visual rights, the rights to sell goods related to the work (merchandising rights-dolls of Harry Porter could be a good example ) and dramatic or performance rights.

### 9.6.2 Does it matter?

Yes it does. Since royalty is paid on sales of number of copies (as the number of copies increases, the rates may increase or decrease or be fixed, irrespective.) While the author gets compensation from primary rights, in the subsidiary rights he or she may have to share with the third party to whom the subsidiary right is licensed and of course, the 'copies' should be clearly defined as print/electronic version/both.

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## 9.7 GRANT OF CONTROLS

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Obviously, the issue then is of control – Who controls the decisions? Does the standard copyright agreement/publishers agreement work in favour of the author or in favour of the publisher. If the issue had been so straightforward we would not have raised it. It is for you to find out, by talking to authors and publishers both, what the views of the concerned parties are.

Usually, the author is not so aware of these issues and agrees for a 'lump sum' agreement especially when the subsidiary rights are concerned because he is aware of the impossibility of finding out the precise situation.

The 'controls' then are left by the author usually to the 'good faith' of the publisher. However, when electronic rights are concerned, both publishers and authors can benefit for the current (and future) possible gains and so must build into the agreement the eventuality of other forms of the work apart from the printed one.

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## 9.8 E-RIGHTS

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It is a good idea for both the publisher and the author to put down in black-and-white what they construe as e-rights. Legahelpindia.com lists the issues involved here: Who controls electronic rights—the publisher or writer?

The increased importance of electronic publishing requires publishers and writers to pay greater attention to electronic rights, issues. Thus, most contemporary publishing contracts, at least those where at least the publisher or writer was represented by counsel, contain some reference to "electronic rights". One difficulty that exists is that even though most publishers and writers are familiar with electronic rights, or "e-rights" as they are commonly referred to, neither the publishing industry, legal profession or the courts have defined with specificity the meaning or scope of e-rights. Courts will therefore analyze the language of individual publishing contracts, at least until an industry standard defining e-rights has been accepted, to determine whether the licensor or licensee fully controls or has limited control of specific e-rights in any given situation. This situation makes it essential for the publisher and writer to explain in the publishing contract what they specifically intend e-rights to include.

This is what is meant by a 'future technology' clause to exploit a work in "all media now known-or hereafter conceived or created."

Given the fast pace of technological developments, it may genuinely be difficult for the parties involved to determine the scope of what rights would be covered under e-rights. Understandably, therefore, it is necessary for author and publisher to work amicably towards clarifying issues regarding rights and controls.

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## 9.9 DETAILED RIGHTS: ADDENDA

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The publishers particularly must include under the 'grant of rights' clause, a comprehensive, detailed description of the rights granted by the writer.

One of the ways of resolving issues is for the author to include an “addenda” to the publishing agreement. However, in their anxiety that such an addenda may cause the publisher to decide against publishing the work, most authors resort to goodwill and trust and hope that the publisher will be fair in sharing profits.

In the ADDENDA the following can be included:

The rights to i) publish, print, promote, display, perform, modify, revise sell, distribute, transmit, license and merchandise the work, in whole, in part and in excerpts, in all languages, in collective and derivative works , in any and all formats, forms or media now known or hereafter devised and ii) transfer or license the rights to third parties.

(Taken from “Appendix 6: Sample Publishing Agreement with Comments” by Jon Tandler, pub in **Intellectual Property: Issues in the Publishing Industry** ed S K Ghai, FIP, 2008.)

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## 9.10 FEDERATION OF INDIAN PUBLISHERS

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The FIP, since its inception in the early 1970s, has been bringing together publishers of Indian languages on one platform. It supports the cause of Indian Publishing “by acting as an interface for the publishing industry with the Ministries of Human Resource Development, Finance, Defence, the National Book Trust and other Government Departments and agencies” (FIP website ).

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## 9.11 SUMMING UP

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In this unit we have introduced you to some of the practical aspects of publicity since publication is a collaborative enterprise, the author and publisher need to be adequately compensated for their efforts: The author for creating the work in the first place and the publisher for the value-addition (composing, editing, designing, printing, distribution, sales) he brings to the manuscripts. However, due to the existing mistrust and differing interpretations of compensation, publishing rights and (author) controls are usually documented before any work is begun by the publisher.

We have tried to sensitise you to the issues that publishers and authors face and to the fact that much of what transpires in open to differing interpretations.

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## 9.12 AIDS TO ANSWERS

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1. Do a “google search” with keywords such as Publishing, associations, editors guilds, printers guilds etc
2. Why should an author be able to lay down controls could be one issue. Think of other objections.

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## 9.13 FURTHER READING

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1. Ghai, S K. (ed), **Intellectual Property: Issues In the Publishing Industry**, Institute of Book Publishing, 2008.
2. Ghai, S K (ed), **One to One: Glimpses of Indian Publishing Industry**, Institute of Book Publishing, 2008
3. Jolly, G. S., **Authors and Publishers: Love-Hate Syndrome**, Har-Anand Publications Pvt. Ltd, 2000
4. Malhotra, D. N., **Book Publishing: Principles and Practices**, Clarion Books, 2008
5. MIP-004 **Copyright and Related Rights**, Block 1: Copyright: An Introduction, © IGNOU, 2004.