This information is excerpted from SPJ's freelance guide, which is maintained by the Freelance Community and available to members as a benefit. Email fcguide@spj.org.

Copyright 101

To be successful as a freelance journalist, you need to understand your ownership rights in the work you produce and how you can protect those rights.

The first thing to know is that it doesn't matter whether you are a writer, producer, editor or photographer, whether you write words, create images and graphics, produce audio or video, or select contents and pull them together into a publication. Once you create something and fix it on paper or in a digital file, you own it.

Under the U.S. Copyright Act of 1976, it doesn't matter whether the story came first and you shopped it around to find a publisher, or a client enlisted you to create it — even if that client had a particular story in mind. It's yours.

Regardless of the medium or the sequence of events, you are entitled to be paid fairly for your work, in whatever form it is used. As a business owner, it's important to understand that what you produce often has value beyond the scope of the immediate project, and you need to protect your right to realize that value.

For example:

- A client assigns you to do a story for its magazine published in the United States, and you set your fee on that basis. The client is part of an international group whose members routinely pick up content from each other or post content on their websites.
- A client hires you to produce an in-depth story for which you do considerable research. The contract is exclusive, barring you from reselling the work to any other outlet.

In both of these cases, your rights under the Copyright Act depend on what you and the client agreed to when you took the assignment, and on what further agreements you have made since then.

Copyright is actually a bundle of rights that protect your "original work of authorship" as soon as the work is "fixed in a tangible medium of communication." A fact or an array of facts is not an original work of authorship, but your expression, explanation or summary of those facts is your own work. Verbally recounting an event to someone else does not trigger copyright protection, but recording your words on paper, in computer memory or as a digital recording does. The protection is there immediately. You don't have to do anything more.

It follows, then, that if you wrote the assigned story for the U.S. magazine in the first example above and the client's group wants to publish the story in a European affiliate, they need to ask your permission, and they should pay you for the second use. Your sale of exclusive publication rights to the client for which you wrote the in-depth article in the second example does not bar you from using information you gathered while researching the story in a different publishing

product — unless you agreed that the client would own all your work product.

Protecting what you own

Retaining ownership of your work does not automatically keep others from violating your copyright. If you blog about something and the American Society for the Prevention of That Thing republishes it without your permission, they have infringed your copyright and should have to pay you for using your work.

It's often difficult to prove ownership, even more difficult to demonstrate significant damages and generally more expensive to sue than you will get in return. To remedy this situation, the Copyright Act provides an incentive to register your work. The incentive is that if someone uses your registered work without permission, you are entitled to triple the amount of provable damages and any attorneys' fees you pay to assert your ownership rights. Better still, if you register your work within 90 days of "first publication," you get these benefits retroactively.

First publication occurs when you show your work to someone else, not when it appears in print or on the web. So, if you write a story March 1, a publisher rejects it a month later and you register it May 15, you could collect treble damages and attorneys' fees if the publisher uses your work without paying for it.

Similarly, if you send a 1- or 2-page story idea to a client as a query, you can register the summary before starting work on the story. That will help greatly if a publisher rejects your proposal and a few months later publishes a substantially similar staff-written story.

Contributor: Robert S. Becker

Resources:

- The U.S. Copyright Office publishes many helpful circulars that are written for non-lawyers. One circular, Copyright Basics, is available in English and Spanish.

Copyright registration made easy

Copyright registration is easy and inexpensive, and greatly enhances your ability to protect your work. You can register you work online, upload an electronic copy and pay the fee with a credit card.

If you are a prolific freelancer, you can avoid the nuisance and expense of registering the copyright for each article you produce by routinely using a process known as "group registration." The advantage of group registration, according to the U.S. Copyright Office, is that it allows any number of published works to be registered with a single deposit, application and registration fee.

To be eligible for group registration, all the works must be produced by the same author or group of authors within a 12-month period, and all must have the same copyright claimant. The Copyright Office cautions, however, that in case of infringement, statutory relief can be claimed retroactively only for works registered within 90 days of first publication.

If you have incorporated your business or otherwise work through a business structure, you may register the copyright for work you produced during the registration period in the name of your business. However, if your work during that period includes some articles you co-wrote with others, or if a contract calls for joint ownership of the copyright, those works may not be included in the group registration.

To accomplish group registration, copyright holders must fill out two forms — the basic application form, generally Form TX for written works (including news, features, articles, essays, reviews, editorials, columns and other non-fiction writing), and the Adjunct Application Form GR/CP. Video works are registered on the basic Form PA. Photographs are registered on Form VA. The Copyright Office does not appear to provide for group registration of audio recordings, which are registered individually on Form SA.

Along with the forms and fees, the registrant must include a complete copy of each work included in the group registration. These copies may be originals, photocopies, tear sheets or photographs, as long as all contents of the works are clear and legible.

Beginning July 31, 2017, group registration applications must be filed online. Forms may be downloaded from the Copyright Office website.

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Resources:

- Copyright forms are available at https://www.copyright.gov/forms/
- A library of sample copyright clauses found in contracts is available from Columbia Law School on the website Keep Your Copyrights. It includes clauses specifically for journalists and is indexed by Type of Creator and Type of Grant.

Contracts and copyright — beyond the basics

Filing a copyright application with the U.S. Copyright Office is easy enough. But understanding what to actually do with a copyright can be much more complicated.

Copyright law grants owners a bundle of exclusive rights that allows them to control the use and distribution of the copyrighted work, including the power to:

- reproduce or copy the work;
- prepare derivative works based on the work;
- distribute copies of the work;
- publicly perform the work; and
- publicly display the work.

Copyright owners can pick and choose which exclusive right they wish to license or transfer to a third party, usually in exchange for payment. For independent journalists, a few specific industry terms are used to identify rights more commonly transferred by freelancers to third parties.

First North American Serial Rights (FNASR)

Traditionally, freelancers writing for newspapers, magazines and other periodicals sell clients a license to "first serial rights" in the work. This grants the client the right to publish the piece for the first time. After the first publication, the freelancer is free to re-sell the piece to another medium or outlet.

First North American Serial Rights, commonly known as FNASR, come with the geographic limitation of North America. This means that while the publishing company may have the right to publish the piece first in North America, the freelancer is free to publish the piece internationally outside of North America.

With the advent of the internet, newspapers and magazines are increasingly publishing pieces on online platforms that are not geographically limited to any particular continent. In fact, publishing companies have recently been claiming that FNASR is not limited to print, but also includes the right to publish on their website. As such, to make sure both parties are on the same page, freelancers should expressly specify whether they intend to grant FNASR print rights, FNASR electronic rights or both.

One-Time Rights

Freelancers can also grant a publisher the non-exclusive right to publish their piece once, but not necessarily first. This way, freelancers can license one-time rights to several publications.

Freelancers granting one-time rights to a web publication should understand that due to the nature of the internet, "one-time" can last for a very long time. This could effectively turn into a grant of perpetual rights. If you intend to limit exposure of the publication to a specific time

period, you should specify the time period in the contract. Publication periods of three, six and 12 months are common in the industry.

Second Rights or Reprint Rights

After the first serial rights are sold, freelancers might offer "second rights," or reprint rights, to a different publication. Second rights are often sold at a much lower price.

Electronic Rights

In a digital age where almost everything is considered "electronic," freelancers should be careful when broadly licensing electronic rights to publishers. This term makes no distinction among different types of electronic publications. "Electronic rights," stated broadly, would include the right to publish the piece on a CD-ROM or DVD, to store it in a database such as Lexis-Nexis or Westlaw, and to publish and archive it on the internet. Some publishers even include a catchall stating that they also have the right to publish the piece in any not-yet-invented electronic medium.

If you intend that the publisher only be able to publish the piece on the internet, for example, make that clear in the contract. Similarly, it might be a good idea to specify what types of electronic rights you do not intend to transfer.

Work for Hire

As a full-time reporter working at a publishing company, you might expect that your employer owns all of the work you produce. Independent journalists, on the other hand, likely do not consider the publishing company to be their "employers," nor do they want to relinquish their entire "bundle of rights" to the publishing company so easily. To make sure this doesn't happen, pay extra attention to the terms of the contract and whether it contains a "work-made-for-hire" clause.

Under a works-made-for-hire arrangement, work produced by an employee in the scope of his or her employment belongs to the employer. Work produced by a freelancer might also be considered to be a work-made-for-hire if the freelancer expressly agrees to this in writing.

For independent journalists who have agreed to this arrangement, this means that the outlet commissioning the work owns all rights to the copyrighted work. More specifically, the publisher is considered the author of the work. In other words, it's as if the publishing company came up with the idea itself, created the work on its own and can do whatever it pleases with it. This includes publishing the work without attributing it to the freelancer.

Ideally, freelancers looking to retain more control over their work product should refuse to sign a work-made-for-hire clause or similar "all rights" clauses. Realistically, however, publishing companies are increasingly refusing to work with writers unless they agree to these types of conditions. Instead, freelancers should try to negotiate more payment for these additional contemplated uses in different types of mediums. Or, freelancers could set time limits on the

rights granted to the publishing company, with the rights later returning to the freelancer.

U.S. copyright law does not give writers an attribution right. In other words, publishers are not required to mention the writer's name in connection with the journalistic piece. If you expect your name to be referenced, you should specifically include the right of attribution in your client contracts.

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Resources:

- Sara Suleiman is an associate and intellectual property attorney in the Chicago office of Foley & ; Lardner LLP.
- For a more basic discussion of copyright law and registration information, see Copyright 101 in the Freelance journalism 101 section.
- A library of sample copyright clauses found in contracts is available from Columbia Law School on the website Keep Your Copyrights. It includes clauses specifically for journalists and is indexed by Type of Creator and Type of Grant.
