

IP CHALLENGES IN SELF PUBLISHING

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Abstract: *The movement to digital goods, streaming, print-on-demand and subscription content has changed the landscape for authors. Whereas before, one had to go through agents and publishing companies, it has been possible for authors for some years now to publish a book – whether fiction or non-fiction – themselves and sell it worldwide. Publishers, who cater to this market, have come up with diverse business models to connect the subscription models on the consumer’s end to the independent authors. This flexibility challenges authors to think about their Intellectual Property rights, especially when acting in a global market.*

1. Self-publishing today

It has never been as easy as today to publish a book. There is no need to go through agents and publishers or even just printers to get your writing to the masses, which might appear easy at first glance, but raises the challenge of gaining skills that traditionally published authors don’t need. These skills include graphic design, editing, marketing and, of course, legal knowledge. Whilst the Intellectual Property (IP) remains firmly with the self-published author, he still needs platforms to share the work and, occasionally, help. All these situations require legal knowledge which centre, first and foremost, around IP.

2. IP Basics for self-publishing authors

As mentioned at the beginning, one of the advantages of self-publishing is the full control over the author’s IP¹. In traditional publishing contracts, authors – with the rare exception of well-established ones – have little room to negotiate their rights with big publishers.

Whilst the decision to become a self-published author might arise from a need for control, it is no use when the author does not understand what he actually has control over, especially regarding IP. He needs to understand what IP rights an author has, what can be licensed and how these rights may differ between countries (the Berne Convention² and Copyright Directive have made this much easier).

3. Licensing IP

When dealing with licences, authors need to both think about the IP they license from others for using in connection with their books, as well as how to license their own work, and to what extent. It needs to be clear to the author that there are no implied rights; they only extend as far as the license granted.

¹ Art 2-5 Copyright Directive (2001/29/EC).

² Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979).

Licensing in:

Some of the areas where authors might need other people for support, and – as a consequence – a licence to their work, are:

- Cover designing
- Editing
- Translating

The most important part to consider is to license all rights an author might need, also in the future. It would not be enough to get the licence for a print book cover, when you want to publish an eBook in the future, or use the same graphics for a website or social media.

When the book is published (see below), the licences received must align with the ones granted to customers and platforms.

Licensing out:

The main areas that need to be considered, when granting a licence are:

- **Location:** Is the licence limited to one or more countries, or is it worldwide?
- **Language:** Closely related to location, licensing in only one language is possible.
- **Time:** Does the license terminate, or is it perpetual?
- **Medium:** eBooks, print, audiobooks, movie rights, etc, are possible.

When granting licences to customers, platforms, or other channels, authors are often faced with template contracts that need to be assessed by them. Apart from the factors mentioned above, it is always important to consider if and how a license can be terminated. If the author's work is distributed directly, for example via their own website, the license needs to be defined. One approach to defining «build-your-own» licences are creative commons licenses³.

4. Publishing platforms and business models

The last step before getting the book published is deciding through which channels and on which platforms the author wants to get their book «out there».

Most direct publishing platforms work on the premise that independant authors don't need to pay any or much money up front for the book to be published – they often only take a cut when sales happen. The first decision regarding IP is whether the author wants to be exclusive with one platform (if they require it) or go wide, which means to publish your book through multiple channels or platforms. Choosing (even limited) exclusivity needs to be a conscious decision; the author would be in breach of the contract if he decides to license the same book through other channels. Whenever exclusivity is agreed, it needs to be clear if it is time-limited, and the rights revert back to the author and when, or perpetual. Perpetual licenses may – depending on the respective contract – not be terminated and the author loses his IP completely.

³ <https://creativecommons.org>.