

## **Publication Agreements with Specified Freelancers (Writers, etc.)**

The University uses freelancers in a variety of areas, including as authors for University publications, Copyediting, Proofreading, Book Review, Indexing, Competition Judges, Typesetters, and Foreign Translating Services (Literary Only).

In the absence of a written agreement, the freelance author of an article will in general own the copyright. Accordingly, it is important that there be a written contract with a freelancer for the writing of any article or other work commissioned by a School or Division at Columbia, and that the contract be signed in advance of creation of the work.

There are two main categories of freelance writers: (1) those who create articles, books and other intellectual property on their own initiative, who then look for someone to publish the works; and (2) those who are hired under contract to write articles and the like in accordance with certain specifications.

In general, writers in the first category seek to retain the copyright in their works, while writers in the second category do not. Individuals who are hired by Columbia to create articles and other works generally fall into the second category of freelance writers; thus copyright should be held by Columbia.

As noted above, there should be a written agreement with the writer, signed in advance, that addresses this issue.

### **Copyright Ownership**

While in most cases Columbia will own the copyright in works produced by freelancers, in some situations, Columbia may agree to transfer the copyright back to the author after some period of time, retaining, however, the perpetual nonexclusive right to republish the work in any medium. In other cases, depending on industry custom, the author may not assign copyright at all, and instead grant Columbia a license to publish the work.

In cases where Columbia does obtain the copyright to a work created by a freelancer, it can be through the “work-for-hire” doctrine under U.S. copyright law, or through an assignment of the copyright to Columbia. Under the work-for-hire doctrine, the writer is not even considered the author of the work. Rather, Columbia would be considered the author. In order to qualify as a work-for-hire, three conditions must be met: (i) the work has to be specially ordered or commissioned, (ii) there must be a written agreement before the work is created that the work will be considered to be a work-for-hire; and (iii) the work must fall into one of a number of specific categories listed in the Copyright Act. Contributions to a collective work, like a magazine, and translations of works, fall into these categories. Thus, an article commissioned by a School at Columbia for publication in a Columbia journal, or an article commissioned by UDAR to be written for Columbia Magazine, could be treated as a work-for-hire if there is a written agreement, signed in advance, that provides for work-for-hire treatment.

In academia, work-for-hire status is often looked down upon, so many academic journals, including some journals at Columbia; do not seek copyright ownership through the work-for-hire doctrine. Rather, copyright ownership is obtained through an assignment of copyright by the author to the journal. Because not all works qualify for work-for-hire status, any contract with a freelancer where Columbia claims copyright ownership should contain an assignment of copyright, irrespective of whether it also claims ownership through work-for-hire.

### **Categories of Freelancers: Form of Agreement**

Absent special circumstances (e.g. 3rd party authors also involved), the following categories of freelancers will be contracted through a simple writer's agreement similar to those attached to this document. This writer's agreement would accompany the request for any payment through Accounts Payable and no Purchase Order would be required. The agreement would set forth copyright ownership, scope of rights granted to Columbia and reserved to author, and contains representations that the work does not infringe the rights of any third party, is original, not previously published, etc. The agreement would not require the writer to carry liability insurance (which generally would have low value for Columbia, as general liability policies do not normally cover copyright infringement, the most likely area of risk for the University). For those categories that do not require a writer's agreement, these would be submitted to Accounts Payable for payment without a Purchase Order.