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PUBLISHING AGREEMENTS

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Copyright in the Arab region has a shorter history than in Europe and the United States. Due to the influence of international conventions, copyrights laws in most Arab countries are similar in content, and in tune with international legislation.

In Lebanon, the concept of intellectual property (IP) is not new. Lebanon’s first IP law was adopted in 1923, and was one of the earliest in the Arab region. Since then, several modifications have been made. In 1999, Lebanon, as a signatory to the Berne Convention for the protection of literary and artistic works (although it had not signed up to all the Convention amendments), implemented Law No 75 of 4 April 1999 (Law 75/1999) on the protection of literary and artistic property.

Copyright arose as a result of the advent of the first technology for the production of copies of works: printing. It exists to encourage the production of original literary creations such as books. It gives an author the exclusive right to publish his or her work or to determine who may publish it. It also allows the author to control certain uses of that work and protects against unfair use of the work, such as copying without permission.

The issue of copyright also affects publishers. Like authors, they must:
(1) Make sure that their works obtain complete copyright protection, and
(2) Be careful not to infringe upon works copyrighted by others.

The purpose of this article is to give guidance to foreign authors or publishers who have dealings with a Lebanese publisher.

A BILATERAL PARTNERSHIP CONTRACT

The publishing contract is the starting point for all publishing activity. It is a bilateral contract in which mutual promises are made between the author and
the publisher. Each party should be extremely careful in the drafting of such contracts. Special attention has to be paid to stipulations designed to make the publisher/author relationship more of a partnership than it has often been in the past.

**COPYRIGHT NOTICE AND REGISTRATION**

In Lebanon, both published and unpublished works are protected by the law. A work is protected as soon as it is created in a physical form. A copyright notice is not needed for such protection. However, publishers and authors usually include such a notice on their works to prevent infringement of their rights.

It is practically highly recommended because it notifies readers about this protection and consequently makes it hard for anyone to later claim not to having realized the work was copyrighted. In all events, such claim cannot have any legal effect.

Copyright registration is not required for the protection of the work. The author has the exclusive property right in his or her work as soon as it is created, and retains that right without having to adopt formal procedures (Art.5). The deposit of an application for copyright registration with the Intellectual Property Protection Department (IPPD) at the Ministry of Economy and Trade constitutes a presumption that the depositor is the owner of the work. Such presumption may be refuted by any method of proof (Art.76). In Lebanon, it is usually the author who submits an application for the copyright registration of his or her works. Professional publishers sometimes apply for such deposit or may require the author to do so.

**WRITTEN CONTRACT**

A publishing contract cannot be agreed by word of mouth or by a tacit understanding; it must be put in writing. Failure to do so will result in the contract being void (Art.17). There is no general standard form for publishing agreements or ‘minimum terms’ agreement in any Arab country. Forms of contract often differ from publisher to publisher, from author to author, and from subject to subject.

From a practical point of view, each publisher has a printed standard form, which will always be slanted in its interest. The publisher will always try to acquire the most extensive rights possible. The author must check the contract carefully and can always insist on modifying specific clauses.
Evidently, the more clearly and comprehensively the various forms of exploitation are set out in the agreement, the more effective the agreement will be against any potential infringement. It is obvious that an unwritten agreement creates an unsecured legal status. In any case, these agreements are construed in a restrictive manner (article 19).

**Rights Granted**

The publishing agreement regulates:

(1) The extent of the rights granted to the publisher;
(2) The duration of such rights, and
(3) The financial conditions under which the publisher is entitled to make use of the work which is the subject of the contract.

Such rights must be determined specifically and in a clear and unambiguous manner. Transfer of any right by the author must always be limited to that right only (Art. 19). The rights covered by such agreement should be set out in detail, and the time and location shall be specified (Art.17).

The author may assign to the publisher permission to exploit the work, for the duration of the agreement, in a wide variety of ways such as

- Reproducing and distributing the work on a regular basis in an appropriate and agreed form - the author may grant the publisher a geographically restricted or unrestricted exclusive right of publishing;
- printing including photocopying or not;
- translating the work (into all languages or into specified languages);
- producing a film version or using the work as a basis for an opera or ballet;
- granting rights for the radio transmission or television broadcast of the work;
- recording of the work as part of an edition of complete works;
- using the work in lectures, presentations and performances;
- digitalizing and electronically storing the work on a data carrier, and in the publisher’s own or an online host database;
- using names, terminology, persons or other characteristics of the work in commercial marketing and;
• Granting subsidiary licenses to third parties for the exercise of subsidiary rights.

The publisher is to use the work to the best of his ability in all forms of exploitation authorized under contract, as soon as appropriate opportunities arise.

Any assignment by the author to the publisher of the total future works shall be void (article 18).

THE AUTHOR’S SHARE OF ROYALTIES AND THE DURATION OF THE AGREEMENT

Law No 75/1999 requires a royalty agreement which is the most satisfactory form for an author. The publisher has to grant the author a share of the royalties resulting from every form of exploitation of the work. The publishing agreement must set out the author’s share in percentage terms of the exploitation revenues and selling proceeds (Art. 17). The royalties are expressed as percentages of the book’s retail price. Usually, payment of royalties is made once a year. An advance calculated in accordance with the expected initial print quantity and retail price, can be given to the author.

In the absence of a specific time limit, the publishing agreement shall be valid for ten years only from the date on which the contract is signed (Art. 17). The duration of the publisher’s license can be for the period of the economic rights of the author, i.e., through his lifetime plus 50 years starting from the end of the year of his death (Art. 49).

SUBMISSION AND PRODUCTION OF THE WORK

The work must be complete to be submitted to the publisher. It must include any agreed elements, for instance a forward, a dedication, a preface, tables, an acknowledgment, a bibliography, a glossary, etc. In some cases, it is the author’s responsibility to obtain permission to use any copyrighted materials.

Publishing contracts usually recognize the publisher’s right to make the final decision on matters such as first print quantity, publication date, cover, retail price, promotion and publicity. The author may negotiate such matters before signing the contract. Authors should avoid signing a contract which is vague about the publication date, e.g., the contract should not state that the book “will be published within a reasonable period”. The publisher must ensure
the publication of the book by a specific date. Generally, the publication date may vary between six months and 18 months from the delivery of the typescript.

There are, of course, many other requirements that can be included in publishing agreements and this article is not intended to be exhaustive. Thus it is in both parties' best interests to have such an agreement prepared by a solicitor rather than resorting to copying an existing form or forms, which may not be appropriate to the particular project.