
BioOne Model Publication Agreement

Background

Over time, BioOne has received a number of requests from participating publishers for assistance in reviewing or drafting publication agreements used to establish mutual rights and privileges. Some of these publishers have had no agreement in place, and others have expressed the need to revise existing agreements, particularly in the context of new requirements by funding agencies and employing institutions for authors to deposit articles in institutional and/or subject repositories. Having neither in-house legal expertise nor the resources to underwrite the drafting of a model agreement, we have heretofore prescinded from offering anything other than our experience on an informal basis.

With the progress of NIH's Public Access Policy through Congress, however, we realized that a great many of our publishers would likely need a new publication agreement, one that conforms to the requirements of the law (Consolidated Appropriations Act, Section 218), as well as the increasing number of institutional mandates for deposit to IRs. We also recognized that BioOne, situated at the nexus of a truly collaborative publishing endeavor that attempts to balance the needs of all stakeholders, is in a unique position to draft an equitable agreement.

Upon the recommendation of Jonathan Band, the legal firm Morrison & Foerster LLC generously agreed to provide pro bono legal assistance to BioOne in drafting a Model Publication Agreement in March 2007. Pamela Pasti, Of Counsel in the Technology Transactions Group of Morrison & Foerster's San Francisco office, was assigned to the case. Ms. Pasti concentrates on representing companies in the area of intellectual property and technology transactions. Her work includes the structuring and negotiation of joint venture license agreements, publishing agreements, software and multimedia licenses, distribution agreements, patent licensing, Internet-related agreements, joint development agreements, and a wide range of other technology transfer arrangements.

Over the course of the following year, Ms. Pasti worked with BioOne to review existing publication agreements, notable author's addenda promoted by institutions and libraries (or library-affiliated organizations), and articles describing emerging trends in copyright law as it relates to academic publishing.

We have worked with Ms. Pasti to design a model agreement that can be adapted to suit specific aspects of a publisher's individual needs (e.g., length of embargo). *Items requiring adaptation are bracketed in the text. It is also important to note that by offering this model BioOne is not implying that its publishers must adopt it.*

Goals

At the outset of this project, BioOne established a number of goals that governed the development of its Model Publication Agreement:

- To create an agreement in broad conformity with principles contained in notable authors addenda (SPARC, MIT, University of Michigan) and the SURF New International Model Agreement for Authors (October 2006):

- Copyright remains with the author;
 - Author grants the publisher a limited license to publish;
 - Author retains the right to use the article in the course of academic activities;
 - Author is allowed to make the article publicly accessible in a digital repository;
 - Author is allowed to prepare derivative works from the article;
 - Publisher provides an unsecured copy of the published version of the article in PDF (or similar) format.
- To create a document characterized by brevity and clarity, following the University of Chicago's sample publication agreement as a laudable model (*The Chicago Manual of Style*, 15th ed., fig. 4.2);
 - To establish the principle that scholarly publishing of the sort practiced by not-for-profit academic societies and institutions is a collegial process between authors and publishers, serving mutual goals and interests of each;
 - To acknowledge that not all possible licensing arrangements and legal scenarios can be dealt with in a brief document, but insist that this is of minimal concern in the context of a collaborative effort characterized by common interest and good faith;
 - To encourage publishers to assist authors, upon their request, in complying with mandated deposits to open access digital repositories.

Structure and Main Features

The BioOne Model Publication Agreement is structured to allow the author(s) to retain copyright, while granting the publisher two sorts of rights: (1) A temporally limited and exclusive right to first publish; and (2) A perpetual, non-exclusive right to publish, distribute, and sublicense. The main features of the agreement as they pertain to both publishers and authors are given below.

- *Main features with respect to publishers:*
 - Publisher granted a *limited, exclusive* license to first publish the work for a specified period of time (template suggests six months but may be adjusted; see page 3);
 - Publisher granted *perpetual, non-exclusive* rights to:
 - Publish and distribute the article,
 - Authorize use by end users,
 - Sublicense to third parties (such as BioOne);
 - Publisher allowed to facilitate deposition to digital repositories required by funding agencies upon request by the author;
 - Publisher to receive credit for any re-publication of the published version, significant portions, or modified versions of the article.
- *Main features with respect to authors:*
 - Copyright remains with the author, who grants specified rights to the publisher;
 - Author(s) may *at any time* reproduce and distribute any version of the article, including the published version, in the course of normal academic activities;
 - Author(s) may post any version of the article on a personal website;
 - The author can make the article publicly accessible in digital repositories (a) as required by funding agencies and/or employing institutions, or (b) on a voluntary basis (at the option of the publisher).

Adaptable Elements

We have flagged a number of elements in the Model Publication Agreement as requiring adaptation by bracketing and highlighting them in the text. These items are explained below. Again, please note that BioOne publishers are under no obligation to adopt this agreement, and those choosing to adopt it may vary it in any way they wish.

1. Publication in Multiple Languages

§1, ¶2: "... [and in all languages] ... [and translate]....", §2, ¶1: ... [language]...."

If you anticipate publishing in multiple languages, or would like to retain the right to do so in the future, these phrases should be retained. If not, they may be safely eliminated.

2. Length of Exclusivity Period

§2, ¶1: "... [six (6) months]...."

We recommend that the length of the exclusivity period be set at the shortest possible increment that will not jeopardize subscriptions. In some subfields of the biological sciences (e.g., biomedicine, biochemistry), we believe that a period as short as six months poses no significant threat. In others, especially those fields with long citation half-lives, a period of twelve months may be more appropriate.

3. Deposit to institutional and/or subject repositories

§2, ¶2: "... [if and as required by your employing institution(s) or your funding source(s)]...."

If you wish to allow authors to deposit their article in publicly accessible institutional and/or subject repositories during the exclusivity period without explicitly being required to do so, this phrase should be deleted. If, on the other hand, you prefer that authors not make voluntary deposit during the exclusivity period, this phrase should be retained.

4. Termination period

§7, ¶1: "... [twelve (12)] ... [three (3)]...."

The length of time between manuscript submission and publication should, in fairness to authors, be as short as possible, but realistic given your publication history.

5. Governing law

§9, ¶1: "... [state]...."

Enter the state whose laws you prefer any possible disputes to be governed by (typically the publisher's state of residence or incorporation).

If you have questions or comments regarding BioOne's Model Publication Agreement, please feel free to contact Mark Kurtz, Director of Business Development, mkurtz@arl.org.