

Publication Considerations

The typical publication agreement for an article in a law journal will include the following provisions:

1. An exclusive license from the author to the journal that allows the journal to publish the article in a specific upcoming issue. This license will expire after a set time (often a year). The exclusivity is the journal's -- i.e., no other journal, book, etc., will publish the article during that period. The journal's exclusivity ceases after that period and the author is then free to republish it elsewhere.

- Most journals will acknowledge that an author can post the article on SSRN, a law school website, and similar online locations without violating their exclusivity. They will, however, usually require the author to update those postings with a PDF of the journal's final, published version of the article, once it is available.

2. A perpetual, non-exclusive license from the author to the journal that allows the journal to publish (or authorize another to publish) the article in other contexts. This allows the journal to send the article to Westlaw, Lexis, etc. and to include it in future collections.

3. An agreement that any future publications of the article (or a derivative work thereof) will include a prominent citation to the original journal publication.

As the sample agreements on this website demonstrate, there are lots of other provisions that can be included. But the three set forth above are the essence of the deal.

There are generally two ways in which the above three provisions can be "operationalized": either the author retains the copyright and licenses specific rights to the journal, or the author assigns the copyright to the journal and the journal then licenses specific rights back to the author. In reality, it probably makes little difference which approach is chosen. But many authors are instinctively reluctant to assign their copyrights, and journals have little need to ask for such an assignment as long as they receive the licenses described above. If a journal demands an author's assignment of copyright, the author should ensure that the rights licensed back to him or her include a non-exclusive license that allows the author to publish the article elsewhere and the exclusive right to make derivative works of the article (e.g., presentations, slideshows, follow-up articles, op-ed versions).