

# LEGAL & CONTRACTS ADVICE

An Annotated Contract

## Understand Your Contract with Kindle Direct Publishing



**ALLi**

Alliance of Independent Authors

### WHAT'S INSIDE:

Who Gets Rights

Setting the Price

Getting Paid

And More

## Introduction

Kindle Direct Publishing (KDP) is Amazon's ebook publishing business.

When KDP launched in 2011 it was a game changer for authors, allowing them to bypass traditional publishers and deal directly with Amazon to quickly publish their work to a global audience.

KDP and its sister program, KDP Select, have proven popular as publishing pathways for authors.

However, authors entering into a contract with KDP should ensure they read the fine print of this (and any) contract to ensure it aligns with their understanding of what is involved in the author-publisher relationship.

Ambiguous or complex clauses, and changeable terms and conditions, are potential pitfalls for authors.

Both the KDP and CreateSpace contracts say that Amazon may change the terms and conditions at any time by posting the changes online, and that your continued use of their services is your agreement to those changes. Many courts have upheld these provisions when it comes to the payment of fees.

You will find similar provisions in the terms and conditions of many other POD providers and social media sites, so as an author you may have no choice but to agree if you wish to use the service, but you should always

make informed choices about the future use of your work.

We have annotated the Kindle Direct Publishing terms and conditions to draw your attention to key clauses authors should be aware of when agreeing to engage its services.

Read through the following contract carefully. And, remember, if there's a clause that you don't understand in a contract, always seek clarification before signing it.

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The information discussed in this guide should not be considered legal advice, and is provided as guidance only.

ALLi recommends authors seek legal advice if they are unsure about how to proceed with a contract negotiation.

We hope you find these examples useful, and welcome your feedback.

## KDP Terms and Conditions

### 5.5 Grant of Rights.

You grant to each Amazon party,<sup>1</sup>

... throughout the term of this Agreement<sup>2</sup>

...a nonexclusive,<sup>3</sup>

...irrevocable<sup>4</sup>

...right and license to distribute Digital Books,<sup>5</sup>

...directly and through third-party distributors, in all digital formats by all digital distribution means available.<sup>6</sup>

This right includes, without limitation, the right to:

(a) reproduce, index and store Digital Books on one or more computer facilities, and reformat, convert and encode Digital Books;<sup>7</sup>

(b) display, market, transmit, distribute, sell and otherwise digitally make available all or any portion of Digital Books through Amazon Properties;<sup>8</sup>

...for customers and prospective customers to download, access, copy and paste, print, annotate and/or view online and offline, including on portable devices;<sup>9</sup>

1. Amazon party means Amazon and all its affiliated companies worldwide.

2. In a later section, the agreement says that either you or KDP may terminate at any time, so these words are acceptable.

3. Always look for the word nonexclusive. If you are self-publishing, you should not grant anyone exclusive rights without understanding exactly what you are granting. And even then, you should have the right to terminate the agreement at any time.

4. Not exactly. You may terminate KDP's right to sell your ebook, but they may continue to support ebooks already sold.

5. This is what you want to see—a nonexclusive right for a limited purpose, in this case distributing digital books.

6. This phrase is concerning. Is Amazon going to expand into other formats or become an aggregator like Smashwords?

7. These are the rights they need to distribute your ebook. They make sense.

8. Amazon Properties refers to their website and any other Amazon app or sales channel.

9. Most of this is fine. For clarity, the copy-and-paste language is required to support Kindle's note-taking, highlighting and snippet features.

(c) permit customers to "store" Digital Books that they have purchased from us on servers ("Virtual Storage") and to access and re-download such Digital Books from Virtual Storage from time to time both during and after the term of this Agreement;<sup>10</sup>

(d) display and distribute

(i) your trademarks and logos in the form you provide them to us or within Digital Books (with such modifications as are necessary to optimize their viewing), and

(ii) portions of Digital Books, in each case solely for the purposes of marketing, soliciting and selling Digital Books and related Amazon offerings;<sup>11</sup>

(e) use, reproduce, adapt, modify, and distribute, as we determine appropriate, in our sole discretion, any metadata that you provide in connection with Digital Books; and<sup>12</sup>

(f) transmit, reproduce and otherwise use (or cause the reformatting, transmission, reproduction, and/or other use of) Digital Books as mere technological incidents to and for the limited purpose of technically enabling the foregoing (e.g., caching to enable display).<sup>13</sup>

In addition, you agree that we may permit our affiliates and independent contractors, and our affiliates' independent contractors, to exercise the rights that you grant to us in this Agreement.<sup>14</sup>

10. This enables readers to move between devices and access their books from the cloud.

11. Good. The license to use any trademark is appropriately limited to marketing and selling your book.

12. Metadata means your name, publications date, and other product information. Rights to manipulate metadata are necessary for expanded distribution channels and for adaptation to Amazon's various components (AMS, affiliate APIs, product details, etc).

13. Technical mumbo-jumbo

14. While I would prefer to have more control over who else may distribute my ebook, Amazon may only permit others to do what Amazon is permitted to do.

You grant us the rights set forth in this Section 5.5 on a worldwide basis; however, if we make available to you a procedure for indicating that you do not have worldwide distribution rights to a Digital Book, then the territory for the sale of that Digital Book will be those territories for which you indicate, through the procedure we provide to you, that you have distribution rights. <sup>15</sup>

### 3. Term and Termination

The term of this Agreement will begin upon your acceptance of it and will continue until it is terminated by us or by you. We are entitled to terminate this Agreement and your access to your Program account at any time. We will notify you upon termination. <sup>16</sup>

You are entitled to terminate at any time by providing us notice of termination, in which event we will cease selling your Digital Books within 5 business days from the date you provide us notice of termination. <sup>17</sup>

Following termination, we may fulfil any customer orders for your Digital Books pending as of the date of termination or suspension, and we may continue to maintain digital copies of your Digital Books in order to provide continuing access to or re-downloads of your Digital Books or otherwise support customers who have purchased a Digital Book prior to termination or suspension. All rights to Digital Books acquired by customers will survive termination. <sup>18</sup>

15. If you do not have worldwide rights to your ebook, you may limit the markets. Since the rights you are granting are nonexclusive, this agreement will not limit you from using other distribution methods in any market.

16. In other provisions, they list reasons why they may terminate, such as your work infringes on someone else's copyright. This right to terminate for no reason is typical, so they do not have to justify their termination.

17. This is what you want. The right to terminate at any time without payment of any termination fees.

18. All this is reasonable.

### 5.3.1 Providing Your List Price.

The list price you provide to us is referred to in this Agreement as your "List Price." For some marketplaces, you will provide us a List Price inclusive of value added or similar taxes that are included within the customer purchase price of a product ("VAT"). Where your Royalty is calculated based on your List Price, it will be calculated based on your List Price exclusive of the VAT applicable to the customer. You may change your List Price through the KDP website, and your change will be effective within 5 business days.<sup>19</sup>

### 5.3.4 Customer Prices.

To the extent not prohibited by applicable laws, we have sole and complete discretion to set the retail customer price at which your Digital Books are sold through the Program.<sup>20</sup>

5.4.1 Royalties. If you are not in breach of your obligations under this Agreement, for each Digital Book sold to a customer through the Program, the Amazon party that made the sale (or whose affiliate made the sale) will pay you the applicable Royalty set forth in the [Pricing Page](#), net of refunds, bad debt, and any VAT, sales or other taxes charged to a customer or applied with respect to sales to a customer. If your List Price for a Digital Book is higher than permitted under the [Pricing Page](#), we will be entitled to deem it modified so that it is equal to the maximum List Price permitted when calculating Royalties due to you under this Agreement.<sup>21</sup>

19. Good. You want to control list price. Be sure to calculate VAT when setting your list price.

20. Amazon may discount the price of your ebook. However, later in the contract they explain that royalty payments are based upon the list price you choose, so their discounting your ebook will not affect your royalties.

21. KDP has two pricing and royalty plans, one paying the Author a royalty of 70 percent of the List Price after deduction of VAT and delivery cost, and the other paying the Author a royalty of 35 percent of the List Price after deduction of VAT (but no delivery costs). To qualify for the 70 percent royalty, the list price of your ebook must not be less than \$2.99 nor more than \$9.99. If you want the list price to be outside that range, you are limited to the 35 percent royalty.

#### 5.4.2 When We Pay You.

Each Amazon party will pay Royalties due on Digital Book sales approximately 60 days following the end of the calendar month during which the sales were made. At the time of payment, we will make available to you an online report detailing sales of Digital Books and corresponding Royalties.<sup>22</sup>

#### 5.4.6 Payment Disputes.

You may not bring a suit or other legal proceeding against us with regard to any statement unless you bring it within six months after the date the statement is available.<sup>23</sup>

#### 5.8 Representations, Warranties and Indemnities.<sup>24</sup>

You represent and warrant that:

(a) you have the full right, power and authority to enter into and fully perform this Agreement and will comply with the terms of this Agreement;<sup>25</sup>

(b) prior to you or your designee's delivery of any content, you will have obtained all rights that are necessary for the exercise of the rights granted under this Agreement;<sup>26</sup>

(c) neither the exercise of the rights authorized under this Agreement nor any materials embodied in the content nor its sale or distribution as authorized in this Agreement will violate or infringe upon the intellectual property, proprietary or other rights of any person or entity, including, without limitation, contractual rights, copyrights, trademarks, common law rights, rights of publicity, or privacy, or moral rights, or contain defamatory material or violate any laws or regulations of any jurisdiction;<sup>27</sup>

**22. Nice and clear.**

**23. It's uncertain how you could contest a payment since you have no access to the underlying sales information. This is a problem even in traditional publishing.**

**24. You will find these sorts of provisions in both self-publishing and traditional publishing contracts. They are a list of assurances you give the publisher, plus an agreement to pay for all legal costs and damages they incur if it ends up one of your representations and warranties are not true. Let's take a closer look at what these say.**

**25. Among other things, this means that you are at least 18 years old and have the mental capacity to enter into a contract, and that you have whatever authority you need from others to grant the licenses and enter into this contract.**

**26. You are assuring them that you have the right to sell your ebook, either because you own the copyright or have obtained all the necessary permissions, licenses, and rights.**

**27. You are responsible if your work is infringing, defamatory, or illegal, so make sure it isn't!**

(d) you will ensure that all Digital Books delivered under the Program comply with the technical delivery specifications provided by us; and <sup>28</sup>

(e) you will be solely responsible for accounting and paying any co-owners or co-administrators of any Digital Book or portion thereof any royalties with respect to the uses of the content and their respective shares, if any, of any monies payable under this Agreement. <sup>29</sup>

To the fullest extent permitted by applicable law, you will indemnify, defend and hold Amazon, its officers, directors, employees, affiliates, subcontractors and assigns harmless from and against any loss, claim, liability, damage, action or cause of action (including reasonable attorneys' fees) that arises from any breach of your representations, warranties or obligations set forth in this Agreement. <sup>30</sup>

We will be entitled, at our expense, to participate in the defense and settlement of the claim or action with counsel of our own choosing. <sup>31</sup>

**28. Technical requirements are on their website.**

**29. KDP will pay only one person. If you have co-authors, then you are promising to pay any co-writers their shares.**

**30. This means that if Amazon or anyone else on the list is sued because any of the statements in (a) through (e) are incorrect, or you otherwise breach the contract, you will be obligated to pay the attorneys and all costs and damages for everyone on their list.**

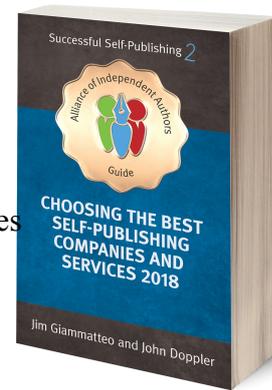
**31. They will hire their own attorneys, and you will pay their attorneys if you breach the contract.**

ALLi publishes:

## Choosing The Best Self-Publishing Companies and Services 2018

The only annually updated guide to the global self-publishing services industry.

**The 2018 edition is now available**  
(FREE to ALLi Members).



# AskALLi

The AskALLi Quick & Easy Guides to Self-Publishing address the most common questions our members have about self-publishing.

The Guides are organized across the seven stages of the publishing cycle: editorial, design, production, distribution, marketing, promotion, and licensing rights. There are also guides to running a successful business as an indie author.

For more advice and a daily blog, visit our Self-Publishing Advice Centre at <http://selfpublishingadvice.org/blog/>

Founded by novelist and poet Orna Ross, the Alliance of Independent Authors is a global nonprofit organization offering authoritative advice, experienced guidance, and advocacy within and outside the publishing industry.

Its mission is ethics and excellence in writing and publishing. The Alliance offers a variety of member benefits, including discounts and incentives and collaboration and connection with the best self-publishing authors and advisers in the world.