Understanding and Negotiating  
Book Publication Contracts

Hands-On Exercise: Scenario #2

# Majestic Murals and Glorious Graffiti

Professor Candace Canvas’s monograph, *Majestic Murals and Glorious Graffiti*, is an image-heavy tome examining street art in urban areas. When Candace reviews the initial publication contract her publisher provides, she learns that it requires her to secure permission for each image she uses in her book and to indemnify her publisher against any claims arising from the publication or sale of the book. Candace is concerned with these terms because she does not know where to start with obtaining permission for images used in *MM&GG*, and she is nervous about the indemnity obligations.

Identify some alternative terms that Candace might suggest to her publisher to address these concerns. After you have brainstormed some options for Candace, compare your suggestions with the negotiation options provided on the next page.

# Negotiation Options

Candace’s concerns are about her permissions and indemnification clauses in her publication contract for *Majestic Murals and Glorious Graffiti*. There’s no one right answer, and you may have come up with other options for Candace, but here are some options she can consider:

**Permissions**

* Candace might want to alter her permissions clause to acknowledge her right to rely on exceptions and limitations to copyright, like fair use, instead of requiring her to seek permission to use every image in *MM&GG*. Under certain circumstances, an author’s use of a reasonable amount of another’s work to prove or illustrate the author’s point may be fair use, which does not require third-party permission or payment. If some or all of the images in Candace’s book fall under fair use, she may want to make sure that her permissions clause allows her to rely on fair use rather than secure permission to use these images.
* For images used beyond the scope of fair use, if Candace is unsure how to get the required permissions and what form they should take, she might want to propose alterations to her contract that place more of the permissions burden on her publisher.
  + One option is to ask if the publisher will assume the obligation to obtain permissions for third-party images used in *MM&GG*, though this will likely be a tough sell. If she shifts the responsibility for obtaining copyright permission to her publisher, Candace may want to clarify that the warranties only apply to materials over which she has control.
  + Another option is to propose a clause that commits her publisher to helping her approach rightsholders for permission by providing forms and guidance for obtaining these rights.

**Indemnification**

* Candace may want to limit her indemnification to claims that arise from a breach of her warranties (rather than any claim that arises from the publication or sale of *MM&GG*). Candace may also want to exclude frivolous lawsuits from the indemnification clause, meaning that she will only be required to indemnify her publisher in the event that a claim has merit.
* Candace could ask her publisher to add her as a named “Insured Party” under its Errors & Omissions (“E&O”) insurance policy so that she would be covered in the event of a lawsuit. She could also try to add language to the contract saying that her indemnification obligation is limited to paying a portion of her publisher’s E&O insurance deductible.
* If her publisher won’t soften her indemnity obligations, Candace could consider getting her own E&O policy to protect her in the event of a lawsuit.[[1]](#footnote-1).

1. . **Authors Alliance is grateful to Arcadia—a charitable fund of Lisbet Rausing**

   **and Peter Baldwin—for a grant that supported the creation of these materials.** [↑](#footnote-ref-1)