

Hello,

I'm Kathryn Goldman of Charm City Legal. I'm happy you have decided to download this Lesson in the Law: 6 Key Legal Points in Amazon's Kindle Direct Publishing Program.

I'm an intellectual property attorney and I've been practicing law for over 25 years.

Digital self-publishing is one of the most exciting technology advances in the past 10 years. Today, we're going to cut through some of the legalese in Amazon's Kindle Direct Publishing contract. At the end of the lesson, if you have any questions, send me an e-mail or a tweet. And we'll get your question sorted out.

Let's get started.

Here's what we're going to go over today:

1. We're going to talk about what your rights are. I know you understand that you get to use the Kindle program to publish your e-books, but what else do you get? What are the other rights that come along with the right to use the program? And what exactly is the "Program"?
2. What do you have to promise to Amazon in order to use the Program? You're not promising just a share of your sales. You have other obligations to Amazon and we're going to look at what they are.
3. Do you really control pricing? This is an area that makes Amazon such a strong publishing partner. You can set the price of your work. But there are limits to what you can do and you need to know what they are.

4. We're going to look at how different types of disputes with Amazon will be handled and where they will be handled.
5. We're going to look at whether Amazon can change the deal and what happens when they do.
6. And finally, we're going to look at what your liability to Amazon may be in the event some of the promises you make to Amazon are broken.

Amazon is very clear about how they intend to operate their business and the rules you have to play by.

Amazon encourages you to study the program documents carefully. That's what we're going to do today. We're going to focus on some of the key provisions and break out what they mean for you.

We're going to take a look at the package of documents or group of agreements that make up the KDP Program.

Here are documents where all the rules to the Program are – the contract documents.

1. The Kindle Direct Publishing Terms & Conditions;
2. The Pricing Page;
3. The Program Policies which contain the Content Guidelines;
4. The Amazon.com Conditions of Use; and
5. The Amazon.com Privacy Notice.

All of these documents can be found on the kdp.amazon.com website. But for ease of reference, there is a link below this presentation for you to download a zip file containing the versions of the documents that we are discussing today.

First, let's talk about what your rights are. There are three pieces in the Kindle Program rights pie – the right to use the Program, the right to get paid and the right to protect your copyrights.

The right to use the Program is pretty straight forward. Along with the right to use the Program comes, of course, the right to stop using the Program. You also have the right to opt out of the Kindle lending library. The most interesting thing about the right to use the Program is that the Program is undefined and Amazon is constantly changing it. They change the algorithms that determine rankings, they change the user interface which can change how a consumer is able to locate and purchase your book. They change genre categories which can impact your meta data and therefore your sales. All of these facets work together and a slight change in one aspect may have a ripple effect on your results. Simply put, your right to use the Program is limited to the right to use it in the form they present it at any given time.

The second piece of the rights pie is the important right to get paid. Payment is calculated based on the royalty option you select, either the 35% option or the 70% option. The calculation for each option explained on the pricing page, but in short, taxes and delivery costs are deducted from the 70% option. The 70% option requires that a book be priced above \$2.99 and below \$9.99. The 35% option has maximum and minimum prices depending on the size of the digital file.

You have the right to change the royalty option you have selected.

You have the right to receive a royalty report every 60 days.

Another important right is that Amazon has agreed to collect and pay all sales taxes on your behalf for the sales of your work.

The third piece of the rights pie is the right to control your copyright. Although an in-depth discussion of copyright is beyond the scope of this lesson, your copyright in a work is actually made up of a bundle of rights:

- i. The right to make copies of your work;
- ii. The right to make derivatives;
- iii. The right to control distribution by sale, license or lending;
- iv. The right to perform your work; and
- v. The right to display the work.

Control over copyright distinguishes Amazon from traditional publishers. Amazon is not a publisher. You are the publisher. Amazon is offering you the platform on which to publish your work – it is a digital content distribution program. You have not given control over your work to Amazon except for Amazon’s limited use related to marketing on their site. This is an empowering change for writers. Generally, trade publishers require an author to give a written assignment of the copyright in his work which then allows the publisher to control how, when, where and in what form the work will be presented. Amazon does not require you to relinquish any control of your copyright.

Your right to use Amazon's KDP Program does not come without promises you make in exchange. What are those promises?

1. There are the promises relating to your account: that you are over 18 years old, that the information in your account is accurate and up to date, that you are not using a false identity, that you are responsible for everything that happens in your account even if you did not authorize it and if Amazon terminates your account, you may not open a new one.
2. You promise that there will be no viruses in any of the digital files that you upload.
3. You promise that all the metadata you supply to describe your book is current, complete and accurate. Metadata means things like the title of the book, the title of the series if the book is in a series, search keywords, genre selection, the publisher and publication date.
 - Amazon has Metadata Guidelines that are straightforward, but strict. Unlike Google Adwords where you can buy a competitor's name to advertise your product, Amazon does not permit you to use another author's name in your metadata, or words like "best-seller" or "free". The Metadata Guidelines are found in Amazon's Program Policies.
4. You promise that you own all the rights to the content that you have uploaded to the Program. And you authorize Amazon to make further inquiries to confirm that you have the rights you say you have. If clearances or licenses are needed for any

of your work, you promise that you have obtained them at your expense. If, for example, you use popular song lyrics in your works, it is your obligation to obtain the rights to use those lyrics and you are promising Amazon that you did.

5. In the paragraph of the agreement called *Representations, Warranties and Indemnities*, you promise again that you are not infringing anyone else's rights, that you are not breaking any law in any way, that you are not defaming anyone and that if you owe anyone any money in connection with the work, you will pay it.
6. If Amazon gets sued because you have failed in any of these promises, you agree to indemnify their losses. That means you will have to reimburse them for any money they have to pay because you broke your promises. And that includes attorney's fees.
7. You also agree not to disclose any information about the KDP Agreement and to maintain the confidentiality of all data and communications you receive from Amazon in connection with the KDP Program.

The third key point in the KDP agreement has to do with pricing. Do you control the pricing of your book?

Within the maximum and minimum prices for the different royalty options, Amazon lets you set the List Price of your book.

If your book is sold in a foreign country, Amazon will adjust the List Price to ensure that it falls within the specified maximum and minimums in that country's currency.

Despite letting you set the List Price, Amazon clearly states in paragraph 5.3.4 that they have complete discretion in setting the *retail* price of your book. The answer then is NO, you do not have complete control over the price of your book. Amazon does. And Amazon is not answerable to you for when, whether or why they might change the retail price. But the language is there and you have agreed to it. If Amazon sells your book at a price you did not set, there's nothing you will be able to do about it.

Which leads directly to the fourth key point in the contract – handling disputes.

If you think Amazon hasn't paid you properly, you have only 6 months to bring a claim against them. You can bring your claim in your home state, if the amount is small enough for your local small claims court. If the amount is larger than the jurisdictional limit on the small claims court in your home state, then you may not bring a lawsuit.

Instead, you must start an arbitration proceeding in the State of Washington. The law of the State of Washington will apply. Because the agreement calls for mandatory arbitration of larger claims. There will be no jury. There probably can be no class action and you will not be entitled to any benefits afforded by consumer protection laws in your state.

Now, let's talk about whether Amazon can change the deal and what happens when they do.

The bottom line is you cannot tie them down. Amazon can change the deal and can change the Program and the Agreement whenever they want – going forward. They tell you that right up front in paragraph two. But they cannot change what they owe you in royalties for sales made in the past.

Let's take a look at how they make changes to the contract documents.

If you look at the date of KDP's terms and conditions, you will see that the document was updated on June 13, 2013. The version before this was dated December 14, 2012. That version of the terms and conditions is no longer available on-line for you to compare what changes have been made.

Amazon summarizes the changes for you at the very end of the document.

So, if you flip to the end of the document, you'll see the section Recent Changes to the Agreement.

Here they tell you that they modified Section D of the Pricing Page.

Keep in mind that a change can be about any term in the Program.

Amazon reminds you to review the revised agreement carefully and completely.

Is it possible that other changes may have been made to the KDP program?

Yes, it's possible. But they probably didn't without telling you. I don't think Amazon is the kind of company that tries to slip one by its customers. That is not how they became the leader in this market.

Changes are effective on the day they make them, unless they tell you otherwise. You agree to the changes by continuing to use the Program.

What is your liability to Amazon if some of the promises you make to Amazon are broken?

In short, your liability is unlimited. So if you do something that causes a loss for Amazon, you may be required to pay them back for it.

Amazon's liability to you is limited to the amount they owed you in royalties in the past 12 months. So if something happens like your book is not available for purchase during the largest marketing campaign you've been planning all year and you've lost thousands of sales because your book can't be found on Amazon, there is nothing you can do about it. Amazon is not responsible for lost sales. They want the Program to work as well as it possibly can, but if for some reason it's not working, they are not liable to you.

Let's just quickly summarize what we've gone over today and then we can wrap it up.

You have the right to use Amazon's content delivery platform, a platform that Amazon is constantly changing.

In exchange for that right, you've made serious promises about your ownership in the material you are uploading.

Control over pricing of your e-books is in Amazon's sole discretion.

If you have any significant disputes with Amazon, they will be resolved by arbitration in Washington State.

Amazon can change anything they want anytime they want except they cannot change what they owe you retroactively.

And finally, if you do anything that causes Amazon to get sued, you will be paying for it.

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Thank you for taking the time to watch this Lesson in the Law.

If you have any questions, comments, or corrections, send me an e-mail (kgoldman@charmcitylegal.com) or a tweet @KathrynGoldman (if you use #CCL—CharmCityLegal others can follow the discussion).

Self-publishing on digital platforms is an exciting adventure. It is truly transformative and I'm thrilled to be part of the action.

Make sure you let me know when you are published. I look forward to hearing from you and good luck in your work.