

SoA GUIDANCE NOTE 2024



Forms of collaboration

Guidance notes can give only a brief, generalised overview and the SoA cannot give legal advice. Members are always welcome to consult the SoA for bespoke advice. We try to keep the guides up to date but if you spot errors or omissions, please let us know by emailing info@societyofauthors.org marked 'Guides feedback'.

Obtain bespoke advice

If venturing into any of these creative relationships, we strongly advise obtaining specialist advice – members are always welcome to consult the SoA. This guidance only skims the surface of the terms which should be included.

Five possible scenarios:

- Someone commissions a creator to contribute to the commissioner's work
- Two or more creators want to produce a work which includes discrete contributions by each of them
- Two or more creators jointly create a collaborative work
- An individual engages a writer to ghost-write their life, to flesh out a work based on their ideas/expertise, or to write a company history
- A writer is writing a biography and hopes the subject of the biography might authorise or otherwise endorse it.

1 Someone commissions a creator to create content

Example A: I've written a text and want to commission someone to illustrate it.

If you are commissioning the services of a fellow-creator, remember to treat them as you would expect to be treated yourself. Some of the key terms to be agreed:

- What the creator will be doing and by when
- What rights the creator will be granting/retaining
- What the creator will be paid, and when

- Moral rights: will the creator be credited, and will they have approval over how their contribution might be edited/alterd
- What happens (in terms of rights and payments) if either party is in default, or wants to cancel the agreement mid-stream
- See also point 6.

If you have, for instance, written a book and are considering commissioning an illustrator, translator or scriptwriter: remember that publishers and producers will generally want to commission (and pay) the illustrators, translators or scriptwriters of their own choosing.

Example B: I am writing on a particular topic and want to include contributions from people I am interviewing.

If you are interviewing people for your work, see the SoA's checklist of terms for interviews.

2 Two or more creators want to produce a work which includes discrete contributions by each of them

Example: an illustrator and a poet want to produce a book featuring the illustrator's images alongside the poet's text.

Terms will vary depending on whether the proposed work will be reproducing already-existing content or will involve new content created specifically for the project. Some of the key terms to be agreed:

- Each retains the rights in their contribution
- What forms/formats the combined work will include (for instance: publication in the English language, or in all languages? Printed book and also ebook?)
- Sequence of credits and that they will be given equal prominence
- Freedom of each to use their own elements elsewhere, without reference to the other person, either from the outset or after an agreed time-lag
- Division of income/expenses incurred
- Who is in charge of dealing with publishers (or self-publishing)
- Each giving a warranty and indemnity to the other, with respect to their own content
- If the material has been published previously: double-check that the creator can include it in this new work
- See also point 6.

3 Two or more creators jointly create a collaborative work

It is important that those involved fully understand that none of them may exploit the material created collaboratively, in any way, ever, without the agreement of all co-collaborators.

The Court of Appeal's judgment in the case of *Martin Kogan* 2019 gave an 11-point test to establish whether someone might be considered the joint (though not necessarily equal) copyright owner of a collaborative work. Essentially: the contribution of one person must not be distinct from that of the other contributors, but they don't necessarily have to have done any of the actual writing. Someone

providing only editorial corrections or critique; or only ad hoc suggestions of phrases or ideas, will not qualify. A joint author 'must have contributed a significant amount of the skill which went into the creation of the work'. This could include a person who, in the creation of a screenplay, 'created, selected or gathered together the detailed concepts or emotions which the other author's words have fixed in writing... A contribution that involves the exercise of free and expressive choices is likely to be sufficient to qualify.'

Collaborators, or anyone using input from another person in connection with a project, need to reach a clear and comprehensive written agreement from the outset.

Some of the key terms to be agreed:

- Given that nothing can be done with the material without mutual consent, in some ways no other terms need to be agreed. But more constructively:
- Prominence and sequence of names
- Division of income
- Each bears their own costs and expenses unless agreed otherwise
- Each understands that all involved share legal liability for the work created unless agreed otherwise
- Often the most important point: the extent to which those involved can create other materials (new versions, sequels, etc) independently, on the same topic/featuring the same characters – from the outset or at any time in the future - notably if the project founders
- See also point 6.

4 An individual engages a writer to ghost-write their life, to flesh out a work based on their ideas/expertise, or to write a company history

With a ghosting commission, a person with the knowledge but without the time and/or the skills to create a literary work (the 'subject') pays another person (the 'writer') to do that work for them.

Some of the key terms to be agreed:

- The subject commissions and pays the writer for their time and skill
- The subject generally has full control of all rights in the resulting material and on all decisions on editing, exploitation etc
- Great care needs to be taken over warranties and indemnities
- Clarification as to what happens if either party wants to cancel the commission before the finished work is delivered to the subject and the writer has been paid their fee
- There are many other points which would need addressing, especially if the commission comes from a publisher or agent rather than the subject him/herself. For more, see the Guide to Ghost-Writing
- See also point 6.

5 A writer is writing a biography and hopes the subject of the biography might authorise or otherwise endorse it

Some of the key points to consider:

- If the subject is involved – in terms of endorsement, or in the granting of access to private papers/interviews, or the granting of permission to quote from the subject's copyright materials: they will almost certainly want approval over what is written. With an unauthorised biography, you are not dependent on the subject's blessing (as long as you are mindful of things like libel, privacy, and copyright infringement)
- If you record interviews, or receive approval from the subject, agree in writing at that time what it is you intend to do with that material and that your intentions have their blessing. This is particularly important if the subject might die or lose mental capacity before the work has been published.
- See also point 6.

6 Protecting your identity and work from being accessed or exploited by Generative AI systems

Each party should give undertakings to all other parties to the effect that

they will not, without the other parties' consent use or grant others the right to use the other parties' names, voices, likeness, or any other identifying data, or any part of their [Work/Contribution] in any manner which could help the machine-learning or training, development or operation of generative artificial intelligence technologies;

they will not knowingly – without the other parties' consent - use or allow the use of generative AI in association with the creation or production of the Work – for example for purposes of narrating, translating, images, cover design.