

YOUR RIGHTS WHEN YOUR PUBLISHER BECOMES INSOLVENT

February 2021



Insolvency is a complex topic. This is a rough guide to what it might mean for you if your publisher ceases trading, doesn't pay you or declares itself insolvent or bankrupt. We'll look at what you might expect to achieve, as well as how your contract, timing and other factors can affect the outcome.

We have tried to ensure that the information provided in this guide is comprehensive, accurate and up to date at the time of publication. However, it is necessarily general. It should not be relied on as specific legal or professional advice. If you have any questions or queries, please [contact us](#) or a suitably qualified lawyer or professional. Where we are unable to help, we may be able to refer you to a qualified person who can.

If you notice an error or omission in this guide or think it can be improved [please let us know](#).

Differences in country laws

Bankruptcy and insolvency laws differ in each country of the United Kingdom. This guide relates to the law of England and Wales only. Insolvency law in Scotland differs substantially and the law in Northern Ireland also differs in part. If your publishing contract is not governed by the law of England and Wales, please [contact us](#) to discuss.

1. Don't leave it too late

If you think your publisher might be in trouble, then the earlier you act, the better. Warning signals may include:

- Failure to send royalty statements;
- Delays in payment;
- Failure to communicate;
- Missing publishing deadlines;
- Phones not being answered and emails bouncing back; and/or
- Unexplained and sudden staff departures.

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The money you are owed

Always chase overdue payments or late or missing royalty statements as soon as possible. This is important at the best of times, but even more critical if you believe your publisher is struggling financially. Always keep on top of the money you are owed and never allow a personal connection to cloud a professional relationship.

It is important to note that there are no statutory or other legal obligations on a company to hold money received from sales or licences of your work specifically for you. Royalties due to authors are not held on trust or within specially designated accounts. Publishers use that money as part of their general cashflow, often paying authors, printers and other creditors short, late or not at all when cash-flow is tight. It is vital therefore that you act quickly and stay organised about what you are owed and when.

Once a company gets into financial difficulties or ceases trading, there is usually going to be little or nothing left for you.

For more on what and how to keep on top of payments, consult our *Guide to Chasing Payments* [here](#)

Work in progress

If you are producing new work for your publisher while payments are overdue from them, say something regardless of to which contract it relates. Don't put yourself in breach of contract on one by downing tools on another – but equally don't leave the publisher with the impression that you are not concerned about unpaid amounts. Contact us first and we will advise you as to whether it is appropriate to stop work and help you draft the accompanying notices of breach under your contract.

Copies of your book

Do you buy quantities of your own book to sell or give away? If appropriate, and if your publisher is having trouble paying you, it might benefit everyone if you can accept copies in lieu of monies owed.

However, always take such an offer as a warning signal that something is wrong. And, as with payments, the timing is critical. Getting hold of those copies once a publisher has ceased trading may not be straightforward. For more on this, read on.

2. The difference your contract makes

Your rights are inextricably linked to your contract. Before you sign any contract, be sure to check that it has proper termination clauses allowing you to end a contractual relationship and get your rights back if the publisher is in breach of contract, gets into financial or other difficulties or goes out of business altogether.

Whether your publisher goes into administration, ceases trading or is taken over by another company (in whole or in part), the outcome will depend on the precise wording of your contract and how that tallies with what is happening to the publisher.

Here are a few scenarios where the outcomes differ: .

You licensed rights but did not assign copyright

Is there a clause in your contract that covers the possibility of the publisher's insolvency? It might look something like this:

If the Publisher it goes into liquidation or has a receiver, administrator or administrative receiver appointed, the contract shall automatically terminate and all rights shall revert to the Author.

If there is a termination clause

Generally, if you have such a clause in your contract, your rights in the work will revert to you on your publisher's insolvency. Note, however, the caveat that the precise wording of the clause is important and if the company has gone insolvent, you may get your rights back but no money.

If there is no termination clause

If you have *not* assigned copyright and there is no termination clause in your contract, such contracts will probably be deemed to be 'personal' and terminate automatically when the publisher ceases to exist. However, do seek our advice before assuming that a contract has automatically terminated to avoid difficulties arising in future.

You assigned copyright

In contrast, if you *have* assigned copyright to the publisher, the default position will be that your rights will not revert to you unless your contract says otherwise. This general rule applies even if your publisher ceases to exist or goes into a formal insolvency procedure.

3. “I got an official letter- what can I do?”

Often, the first indication that your publisher is in trouble comes with an official letter. Do contact us immediately to discuss your options but the Key Terms below might help you untangle the wording.

Key Terms

Administrative Receivership

Administrative Receivership is a process whereby a lender can recover monies after a company has granted rights over its assets in return for a loan. If the company fails to repay the loan when due, the lender may appoint an Administrative Receiver to come in and manage the company's property to pay off the lender.

You can deal with an Administrative Receiver as you would a director of the company although note that the Administrative Receiver will have the appointer's interests at heart, rather than yours. The only duty the Administrative Receiver owes you is to act as a reasonably competent receiver.

Your contract is unlikely to terminate automatically if your publisher goes into receivership unless your contract includes wording to that effect.

You can theoretically still sue the company for any monies due to you while an Administrative Receiver is acting. However, there is little point in doing so because the lender is likely to have a prior claim on all the assets, which explains why the Administrative Receiver was appointed in the first place

Administration

Administration is a formal process giving breathing space to a company in difficulty and a moratorium on any legal action being taken against it by its creditors during the administration period. It does not therefore necessarily follow that a company entering administration is destined to cease trading.

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An accountancy firm or specialist insolvency practitioner will be appointed as the administrator to manage the process.

Your contract is unlikely to terminate automatically if your publisher goes into administration unless your contract expressly includes wording to that effect.

Administration does not always lead to a company being wound up, although that might be the outcome. Unfortunately, although the contract is still active, you are not generally able to take action against the company. Even if you are, it is rarely practicable to do so as an author because there are invariably other creditors standing ahead of you in the queue for repayment.

Administration can be entered voluntarily by the company's directors or involuntarily by its creditors. It is therefore important to try to find out who initiated it. This may be an indicator of how deep the financial difficulties are and how likely you are to recoup any outstanding royalties and payments owing to you.

The administration period usually lasts up to a year so you shouldn't expect to receive quick answers from the administrator. However, you should contact the administrator early to clarify your rights. See the checklist in section [5 below](#).

Company Takeover

Your publisher could be sold to a new company at any point, while it is still trading or as part of an administration or receivership process (more of which above). It could also be sold (in whole or in part) to avoid liquidation.

If your publisher is taken over in its entirety, your relationship with the new owner should continue as it did with the old one. Both of you will still be bound by the terms of your publishing contract.

Your contract might allow you to terminate an agreement if the publisher is bought out, but this is rare. If only part of the old company is bought by another company, your contract may give you a right of approval. But as ever, check your contract or ask us to do so for you.

A new company may also take on some or all of your publisher's assets but not the company and its liabilities. This is likely to be the case where your publisher is in financial difficulty.

If you have *not* assigned copyright, and unless your contract says otherwise, your consent will usually be required before the new company can take over your publishing contract. This is affected by way of a 'novation agreement'.

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Watch out for letters that suggest you have no choice but to agree to novate your contract or that ask you to sign and return a novation agreement 'as a formality'. You normally do have a choice in this situation.

- If you want to turn down such a proposal, your contract will remain with the original company until its liquidation. Your chances of being paid monies owing to you will be slight. However, your rights will revert to you when the company is dissolved.
- If you want to accept the principle of novating your contract you can also take it as an opportunity to renegotiate terms with the new publisher, making your consent conditional on it paying all or part of any monies owed to you by the old one. The success of this will depend on your position, and how much the new company wants you on its books.

Whether or not your contracts are transferred to the new company, the old publisher's assets will generally include all existing stocks of your books. This is an important point which can have a major impact on your rights and earnings. See the section below about existing stock.

5. Your publisher is bankrupt

Bankruptcy should not be confused with liquidation, but it often is. Liquidation relates to limited companies. Bankruptcy is a process for people to deal with debts they can't pay. It would be appropriate for publishers agents or services acting as sole traders. It would not apply to companies.

The process for bankrupting an individual differs from those relevant to companies and is beyond the scope of this guide. As ever, contact us to discuss your options if this applies to you and consult our guide to chasing payments here, if you're owed money by an individual.

Your publisher has gone into liquidation

Liquidation is the legal ending of a company. A solvent or insolvent company can be liquidated. Publishing contracts often specify that the contract will not come to an end if there is a voluntary winding-up solely to re-construct the company. However, insolvent or compulsory winding-up when a company can no longer pay its debts is more common.

In the case of insolvent publishers, the liquidation process is usually activated by the company's creditors. As with involuntary administration, an insolvency practitioner (or liquidator) is appointed to manage the company's affairs.

What happens to any money you are owed?

The liquidator's job is to collect all the assets of the company and arrange to pay them out to creditors in the prescribed statutory order:

1. The money will first be paid to secured creditors. These are creditors that have a charge over the company's assets, such as banks or major suppliers.
2. The next to be paid are preferential debts, including monies owed to HM Revenue & Customs and unpaid wages to employees for the period prior to liquidation.
3. Unsecured creditors, including most authors, come at the bottom of the list. Often there is no money available for them.

However, you should still register your interest as a creditor at www.gov.uk/register-creditor-bankruptcy. This will ensure the Court is aware that you are owed money and you will be kept up to date on payments being made as the process unfolds.

What happens to copies of your book?

What happens to stock of your books depends on where it is in the supply chain at the point your publisher goes into liquidation.

Unsold stock

No third party is permitted to sell copies of your book that have not been previously released to the market, without your consent. This applies to an administrator or liquidator acting for your publisher or a new company that has acquired its assets.

This is a little-known provision of copyright law which can have a major impact on your earnings. You should draw the administrator or new company's attention to it as soon as possible. Contact us and we can help with the wording.

Existing stock sold prior to liquidation

Your publisher might have sold the stock before it goes into liquidation, often to a remainder dealer.

If this happens, your claim for a share of the money generated by that bulk sale will be against your failing publisher

This remaindered stock can rapidly appear on Amazon in their 'new and used' listings, and other discounted outlets. No further royalty will be payable for these sales.

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Your contract might give you an embargo period on remaindering. Alternatively, it might specify that you should have first refusal on remaindered stock. It is essential that you check your contract for these caveats and draw attention to them whenever relevant.

What happens to existing sub-licences?

A termination of contract will not usually affect sub-licences granted prior to termination.

For example, if your publisher has licensed a French publisher to produce a French edition of your work, that licence will continue for the duration it was granted.

What rights will revert to you?

The rights that revert to you will be rights in material that was yours to start with or that you have created.

Other elements of your book that were not yours at the outset cannot revert to you. These include cover artwork, illustrations and photography, index, or other contributions supplied by a publisher or third parties.

The publisher automatically owns the copyright in the 'typographical arrangement of the published edition'. This includes that the design, layout and general appearance of the published work.

What this means is that although the rights in your own work have reverted to you, the book could not be republished in its existing form.

6. Practical steps

Some practical actions to take to protect your rights, protect your work, and stay engaged with the process.

Do your research

First, find your contract. Key clauses may include the grant of rights, termination, remaindering and 'assignment of the contract' provisions. These will be critical for what you are able to do next. [Contact us](#) for further advice.

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Even if you don't have the full information, identify what monies you know you are currently owed and what sub-licences you know are in operation. Past royalty statements are often the best source of such information.

If you have a personal contact with any staff still employed by the publisher, they can be a good source of information. Keep in mind that they may be in a precarious situation themselves.

Keep hold of any information sent to you by your publisher or a liquidator/administrator acting on its behalf.

Checklist of points to raise

A checklist of points to raise when relevant with the administrator or liquidator.

Whether or not rights in your work have reverted to you...

1. Ask how many copies of the work are still in stock, and assert a contractual right of first refusal. You could explore the possibility of buying up some or all existing stock.
2. Emphasise that no new books may be printed and existing stock cannot be sold by a liquidator without your permission or by an administrator other than in accordance with the remainder provisions of your original contract – and then only if you are paid proper royalties.
3. If you are entitled to a share of the income from sub-licensed rights, ask for a list of any sub-licensed deals currently in operation.
4. If the publisher is in possession of any valuable artwork, photographs, transparencies or other original materials, send an itemised list and ask for the items to be returned to you by an agreed secure delivery method.

If rights have reverted (or will revert) to you on liquidation...

1. Make clear that the contract has terminated or, if directed by your contract, serve formal notice to that effect. Quote the relevant clause in your contract in correspondence. Ask the liquidator to confirm that it access that the rights have reverted.
2. Ask for copies of any sub-licence contracts from your publisher or the administrator/liquidator appointed on its behalf;
3. If it could be of value to you, ask whether you can be sent the original design files, along with the publisher's copyright in the design embedded in them. These might be

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in a 'print-ready' format which a new printer could work with directly, or they might be the original source files which a designer will be able to work with. If they agree to this, expect to pay a modest fee. Having access to this artwork can be particularly useful in highly illustrated works if you own all rights in the images as well as the text.

4. Ask for confirmation that notice of termination of any ebook and/or print on demand versions has been sent to the relevant producing companies (e.g. Amazon if it's a Kindle ebook).
5. Be clear if you want to buy any or all stock.

Other actions...

1. Remember to register as a creditor with the Court at www.gov.uk/register-creditor-bankruptcy.
2. Keep any emails or paperwork you may be sent confirming that the contract has terminated and that the company has gone into liquidation. This evidence will be important if responsibility for terminating ebook/POD versions falls to you. You will also need it when offering rights to a new publisher in future.
3. Ask the administrator/liquidator to delist any ebook and print-on-demand versions of the work. In practice, this may not happen. So, check all the relevant websites, but be aware that such sites will want clear evidence from you that the company has gone into liquidation and rights have reverted to you before they will accede to any requests from you.
4. Contact any sub-licensees. Again, you will need to include evidence that the publisher has gone into liquidation and that rights have reverted to you. They might agree in future to send all payments and statements to you. It is more likely that they will send your share of monies direct to you. If the liquidator has not supplied you with a copy of the sub-licence contract, the licensee should be willing to do so.

The creditors' meeting

If you are invited to a creditors' meeting, you might consider attending, time and cost-permitting, but the point in doing so would be to learn more about the process - your costs in attending will not be recoverable and attendance (or non-attendance) does not affect your status as an unsecured creditor.

7. Other key terms

Pre-Insolvency Moratorium

This is a procedure which provides breathing space for directors for up to 20 days to prepare and negotiate the terms of proposals with creditors. It is an out of court procedure, but commencement of the moratorium must be notified at the Companies Registry. Again, it is a warning sign and contact us if you need to know more

Company voluntary arrangements Scheme of Arrangement/Restructuring plan

Some publishers facing difficulties may agree informal repayment schemes with their creditors or enter more formal Company Voluntary Arrangements

If this happens, you should contact your publisher as soon as possible. Find out how your intellectual property and contractual rights may be affected and when you will be paid. Refer any correspondence to us as we find that authors are often given incorrect information.

As distinct from informal negotiations between a publisher and its creditors, which carries no legal protection, CVAs are a form of statutory contract. If 75% of the creditors in value approve a scheme of voluntary arrangement, the company is then protected from proceedings being brought against it by its creditors.

If the publisher does not obtain the requisite 75% vote, it is vulnerable to a winding-up petition to liquidate or legally end the company. If you receive notification of such a creditors' meeting, contact your solicitor or accountant as soon as possible.

Striking off and dissolution

Occasionally we hear of a Company being struck off the Companies Register for not filing accounts or being dissolved at the request of the directors. These can cause legal complications beyond the scope of this guide. If it happens to you get in touch

8. What can the SoA do to help?

If you believe your publisher is in difficulties, [contact us](#) with a copy of your contract and any correspondence from the company. Our advisors are not insured to give legal advice but we can offer practical guidance to members based on many years' experience.