

Get it in writing!

If there is any one piece of legal advice that holds true in (virtually) all situations, it is this: "Get it in writing!", says attorney Lawrence Savell. "The point is that, in the event of a dispute, the best way to prove that the terms of an agreement were as you say they are is to have a contemporaneous written memorialization of those terms signed by the parties involved.

The September 24, 1999 decision by the United States Court of Appeals for the Second Circuit in *Tasini v. New York Times Co.*, involving electronic rights to print articles written by freelancers, makes it clear that this advice is no less applicable in the context of editorial dealings with such writers. Reversing a lower court ruling, the Court of Appeals decided that, under federal copyright law, publishers are not entitled to place the freelance content of their periodicals into electronic databases and onto CD-ROMs without first securing the permission of the freelance writers involved. (The case did not involve the efforts of employees, which should be covered by standard "work-for-hire" employment agreements.)

Decision can't be ignored

Although the decision represents the ruling of only one federal appellate court (albeit a very respected and followed one), on a narrow set of facts (it does not specifically involve the Internet), may be appealed, and might not necessarily be followed by other federal circuit courts, it cannot be ignored. The ruling may prompt publishers to pull from their databases any freelance material affected, and/or to offer retroactive payment for such electronic use—an expensive, tedious, and time-consuming process.

Protect yourself

Publishers contemplating on-line publication may—as their more prudent counterparts have already been doing for some time—protect themselves by requiring that freelancers enter into contracts clearly and comprehensively granting the publishers the rights they desire, designed to constitute consent to and allow electronic republication of works without additional compensation.