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Ask a Lawyer Archive



Can I Sell Copyrighted E-Books Without The Permission Of The Author?
[Kristie Prinz](#)

Q.

I have in my possession hundreds of e-books (internet books) which are copyrighted. Do I have the right to sell copies of this book without the permission of the author?

-- *Yazan*

A.

No, you would only have the right to sell these e-books, upon obtaining the express permission of the owner of the rights in the work.

Section 106 of the Copyright Act sets forth the rule on exclusive rights in copyrighted works:

(T)he owner of copyright under this title has the exclusive right to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Thus, Section 106 expressly provides that the copyright owner has the exclusive right to distribute copies of

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and sell a copyrighted work.

So, your first hurdle to obtaining the legal right to sell these works is to identify who owns the legal rights in the work.

While the copyright owner is generally going to be the author of the work, this is not uniformly the case. For example, if the work was created as a "work for hire," the owner will be the employer or the party who commissioned the creation of the work. Section 101 of the Copyright defines "work for hire" as follows":

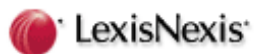
1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. . . .

Similarly, if the rights in the work were transferred by assignment, the copyright owner will be the assignee of the rights in the work.

Once you identify the owner of the rights in the work, you will need to obtain the legal right to be able to distribute and sell copies of that work. My advice would be to negotiate a written license agreement with the copyright owner, which would grant you the right to distribute and sell the work, and to retain a intellectual property licensing attorney licensed in your jurisdiction to advise you in negotiating the terms of that license agreement. Because intellectual property licensing is a niche practice requiring particular legal expertise, which the average lawyer without such expertise cannot even handle well on their own, I would recommend against trying to negotiate the license entirely yourself. In my experience, businesspeople obtain much better license agreements when they have retained an expert to assist them in the process, and my expectation is that you would obtain a better agreement as well with the advice of an expert.

-- Kristie Prinz

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