

WHITE PAPER

Our Book Together – The Publishing Contract

Part I: Principles, Specification and Payment

INTRODUCTION

During many years in publishing and many contract negotiations I have had to deal with a wide variety of queries relating to the publishing agreement/contract. Although contracts between Authors and Publishers can vary from company to company, the standard clauses tend to remain broadly the same. Therefore, in the following series of articles I will explain what lies behind these standard clauses so that Authors are able to enter into negotiations with an understanding of the document they are being asked to sign.

Examples have been taken from the RHE Media Author Agreement and related documents. However, please note that the wording of standard clauses will vary from Publisher to Publisher so it is vital for Authors to read the draft contract very carefully before accepting the terms they are offered.

Also note that I have used the term ‘typescript’ throughout this article. Very few, if any, Authors produce ‘manuscripts’ these days – i.e. books that have been written by hand: *manu* ‘by hand’ and *scriptus* ‘written’. Indeed, Publishers are likely to reject handwritten or typewriter-written scripts because of the time/cost involved in transcribing or scanning the pages to turn them into a digital document. The Publisher will insist the Author produces a digital document so, if the Author doesn’t have a fairly modern computer (‘fairly modern’ because old computer disks can cause lots of problems), then he or she will have to find someone who will type their work into a computer (at the Author’s expense).

PRINCIPLES ON WHICH THE PUBLISHING CONTRACT IS BASED

The concept of intellectual property and copyright and the fact that, in the past, Authors were often unable to afford to publish their own books, led to the development of a business model for traditional publishing companies that is very unusual in the corporate world. I describe this as the Mutual-Risk Model – i.e.:

- the Author risks their time and reputation in writing the book and
- the Publisher risks the up-front financial investment needed to produce, promote and sell the book.

Usually, the Author is offered a share of the net receipts (i.e. the revenue left after retailer and wholesaler discount has been paid) from all sales as a royalty in return for assigning the

Publisher the exclusive right to produce copies of their intellectual property for the period of copyright (the remaining lifetime of the Author plus 70 years). Therefore, the Author does not hand over their copyright to the Publisher in its entirety – he or she only licenses the Publisher to use their copyright in the hope and anticipation of mutual benefit. If the book sells well the Publisher and the Author make money and if the book doesn't sell well then both the Publisher and the Author lose, although the Author will still receive royalties on any copies that are sold even if the Publisher doesn't make a profit or cover their costs. This is because, while the book is still in print and being sold, the Publisher is obliged to continue to pay the Author for the rights that the Author has licensed to them under the terms of the contract.

The relationship between the Author and their Publisher is therefore a partnership. The Author is not employed by the Publisher nor are they a supplier of goods to the Publisher. On the other hand, the Publisher is not a service provider nor do they work for the Author because the Author is not paying the Publisher. It is a true partnership because both parties have a vested interest in the success of the book and success is most likely when the Author and the Publisher actively cooperate in both the production and the promotion of the book.

THE PUBLISHING AGREEMENT

Introductory Clauses and Specification

The Agreement begins, as all contracts do, with the details of the parties making the Agreement – the Author (or Authors) and the Publisher. Please note that the Agreement is binding on the Author and on his or her 'executors, administrators and assigns' – i.e. on those responsible for the Author's estate after his or her death. This is because the period of copyright is for the lifetime of the Author plus 70 years. Therefore, if the Author dies a year after their book is first published then the Publisher holds the license to publish for a further 69 years. Royalties will continue to be paid to the Author's heirs and assigns after their death.

AN AGREEMENT made this **XX** day of **XX XXXX** between

[Author] of **[Address]**

(hereinafter called 'the Author', which expression shall, where the context admits, include the Author's executors, administrators and assigns) of the one part and RHE Media Ltd (registered in the UK, No. 08769581 whose registered office is at Moorgate House, King Street, Newton Abbot, Devon TQ12 2LG (hereinafter called 'the Publishers', which expression shall, where the context admits, include the Publishers' assigns, or successors in title as the case may be) of the other part whereby it is mutually agreed between the parties hereto as follows:

The first clause of the Agreement describes ‘The Work’ – i.e. the book that is the subject of the Agreement. This clause should describe the salient features of the Work – usually the extent (the length in number of words) and the number of illustrations and/or permissions – as these are the features that affect the cost of production. The title of the book can be provisional at this stage. The Publisher will discuss the book title with the Author because the title is a key promotional tool, particularly in these days of key words, SEO and internet searches.

1. The Author agrees to write a work at present entitled
[Title]
(hereinafter referred to as ‘the Work’) consisting of text and illustrations of approximately **XX pages (XXX words, including a maximum of XX illustrations, each one accounting for XX words)**.

The second clause covers the date on which the Author will submit the final typescript of the Work. Setting a delivery deadline is important as the Publisher will need to determine and announce the publication date. The Publisher will then work towards the publication date by investing in advance publicity for the book so that plenty of ‘dues’ build up (‘dues’ are orders for the book ahead of publication). It makes good business sense to build up as many dues as possible so that, when the book is published, the Publisher will receive sales revenue as soon as possible to help to cover the costs of production.

2. The Author undertakes to deliver an acceptable, final and complete digital typescript of the Work by file transfer, on memory stick or as e.mail attachments not later than [Date] **XX.XX.XX** and at that time will provide a duplicate hard copy of the typescript if required to do so by the Publishers.
 - (a) Should the Author neglect to deliver an acceptable, final and complete typescript by the prescribed date the Publishers may, if they think fit, decline to publish the Work, in which case this Agreement shall automatically terminate provided however that the Author shall not be at liberty to publish the Work elsewhere without first offering it to the Publishers, on the terms of this Agreement.
 - (b) The Publishers shall not be responsible for any accidental loss of or damage to the Work by fire or otherwise while it is in their custody or in the course of production.
 - (c) An acceptable, final and complete typescript is defined as a typescript that conforms to the specification that is attached to, and forms part of, this Agreement.

Typescript delivery

This clause may also include sub-clauses (see a, b and c in the example above). For example, there is usually a sub-clause that describes what will happen if the Author fails to deliver the typescript by the agreed deadline. The sub-clause will say that if the Author fails to deliver the final and complete typescript by the deadline then the Publisher may decline to publish the Work. This sub-clause will also say something to the effect that ‘the Author shall not be at liberty to publish the Work elsewhere without first offering it to the Publishers, on the terms

of this Agreement’. This is included because the Publisher may have already invested financially in the book prior to typescript delivery. Therefore, if the Author does finish the book eventually, the Publisher with whom the Author first signed has an established claim and is entitled to publish it in order to recoup the investment they may have already made.

Authors should note that not delivering the typescript by the agreed delivery date is a breach of legally-binding contract terms and, if the Publisher has invested a lot of money in anticipation of publication, technically they could look to recoup some of that money from the Author – probably in lower royalties and/or repayment of part of an advance. Some contracts may even include clauses relating to financial recompense for the Publisher in the event of the late delivery of the typescript.

The specification

Another sub-clause may refer to the specification for the book. In the case of complex books such as textbooks, academic titles and illustrated non-fiction titles, a detailed specification will be drawn up by the Commissioning Editor after initial discussions with the Author. The specification is intended to ensure that the book that has been approved for investment by the Publishing Board/Committee (see our [White Paper: Our Book Together – The Traditional Publishing Model](#)) is the same book that the Author finally delivers after many months of writing. The specification may also include a writing schedule that sets out delivery dates for delivering the typescript in batches. Some Publishers employ development editors whose job it is to work with the Author during the writing period to ensure that the specification requirements are met and to make sure the typescript is delivered on time. The specification is also helpful for the Author as it provides guidance on delivering a typescript that is acceptable. The word ‘acceptable’ is a key term in the publishing contract because if an Author delivers a typescript that is determined to be ‘unacceptable’ by the Publisher, the Publisher can reject it outright or require the Author to rewrite the book so that it meets the required specification.

RHE MEDIA LIMITED

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TITLE SPECIFICATION TEMPLATE

(This specification forms part of the contract for this title.)

Proposed title:**Author(s):****Typescript delivery date:****Target publication date:****Format/trim size:****Paperback/Hardback/Ebook:****Colour/black & white:****Extent** [*target number of printed pages*]:**Total number of words:** maximum = XXX words @ XX words per published page (calculated on XX ‘pages’ = XX pages plus X pages for prelims and end matter, minus XX half-page/full page illustrations).**Illustrations:** a maximum of XX illustrations – Authors please provide high resolution jpeg files for photographs and/or finished artwork.**Target Market/Readership:***[Defining the target market/readership for the book and ensuring that the book the Author delivers is designed to meet the needs/wants of the target market is crucial in a very crowded and competitive market]***Glossary Yes/No:****Index Yes/No:****Content and Coverage** [*for example*]:

Title page

Copyright page

Foreword

List of Titles in the Series

Contents list

Introduction

XX Chapters [*list of chapters as agreed with the commissioning editor*]

References

Glossary

Text Features: *For example:*

Each chapter will usually include some or all of the following features:

- Chapter opening box – key points that will be covered in the chapter;
- Information boxes – these can be used for things like case studies, examples, technical/scientific/medical background or more advanced information, etc.;
- Activities and questions;
- Chapter ending bullet points – summary of the key information in the chapter.

Writing Schedule [*Agreed with the Author so that the typescript is delivered in batches so that the development editor can check to ensure the book is progressing along the right lines and that the Author is on track to meet the final delivery deadline*]**A complete sample chapter by [date]:****Batch 1 (XX chapters in addition to the sample chapter) by [date]:****Batch 2 (XX chapters) by [date]:****Complete and Final Typescript by [date]:**

ROYALTY CLAUSES

Royalties are a percentage of the net receipts from sales. This means that an Author can expect to receive, say, 10% of the net amount received by the Publisher from the sale of their book. Royalties are paid on the net amount because the Publishers give retailers a discount in return for stocking their book. Therefore, Publishers don't receive revenue resulting from the sale of a book at the 'published' price but at the published price minus discount. If the Publisher is reliant on third party retailers (i.e. book shops and ebook retailers) in order to sell their books then most if not all of their revenue will be net of discount. However, even if most Publishers' sales are made direct to consumers, they may still promote the book by giving discount to customers so they will still only pay royalties on the money they actually receive. The royalty calculation is therefore as follows:

Book price = £10

Average discount to retailers = 40% (so the Publisher receives 60% of the revenue from the sale of each copy)

Royalty = 10%

Sales = 100 copies

Net receipts = $100 \times £10 \times 60\% = £600$

Royalty paid to the Author = 10% of £600 = £60

The clauses dealing with royalty payment are as follows:

8. In consideration of the payments hereinafter mentioned the Author hereby assigns to the Publishers the sole and exclusive right to publish the Work in printed format and electronically as an ebook for distribution online and on CD ROM/DVD, and in any electronic format whether now known or hereinafter invented, including but not limited to WAP communications and any other telecommunications technology, or any abridgement of the Work or any substantial part of the Work for the legal term of copyright together with the rights enumerated in Clause 16 throughout the world.
16. The Publishers agree to pay the Author the following royalties and/or fees, in respect of book or sheet or electronic sales during the legal term of the copyright.
 - (a) On the Publishers' own printed edition, or a printed edition manufactured by the Publishers for a third party, **ten per cent (10%)** of the Publishers' net receipts (the net price received by the Publishers for the sale of copies of the Work including any discount).
 - (b) On all royalties received by the Publishers on account of a printed edition or printed editions of the Work printed by Book Clubs or other persons under license from the Publishers for sale within the territories covered by this Agreement, **fifty per cent (50%)** of the Publishers' net receipts.
 - (c) On the Publishers' ebook edition, or an electronic edition developed by the Publishers for a third party, **twenty-five per cent (25%)** of the Publishers' net receipts (the net price received by the Publishers for the sale of the Work, or parts of the Work, as ebooks).

In Clause 8 in the example above the Publisher sets out the specific rights assigned by the Author to the Publisher under the terms of this Agreement. In this case the Author is assigning the exclusive right to print the Work, the right to produce the Work as an ebook and the right to produce the Work in electronic format on CD ROM/DVD and in any other electronic format that is known now or that is invented in the future. These rights are all parts of the Author's copyright that he or she is assigning or licensing to the Publisher but, to be clear, the Author is not giving up his or her copyright here – only agreeing to allow (license or assign) the Publisher to use certain parts of copyright in order to print copies and sell the book worldwide. This is an exclusive deal – the Author can't do the same deal with another Publisher – and it is a deal for the period of copyright (the Author's lifetime plus 70 years). I will examine the grant of rights in more detail in my next article on the Publishing Contract.

Clause 16 sets out the royalty payments in more detail, providing specifics about the different royalty rates for different editions of the Work. As you can see in 16 (a), in this case the agreed royalty rate is 10% of net receipts for sales of the print edition of the Work that the Publisher publishes itself or on sales of a print edition of the Work that the Publisher produces on behalf of a third party. In 16 (b), where copies of the Work are sold to Book Clubs on a royalty inclusive basis (i.e. the Book Club buys copies of the Work from the Publisher at a price that includes the royalty that the Book Club has agreed to pay the Publisher) the Author will receive 50% of the net receipts from this sale. In 16 (c), a separate royalty rate, 25%, has been agreed for sales of the ebook edition of the Work. Ebook royalties are usually higher than print book royalties to reflect the fact that the Publisher doesn't have to pay to print copies of the Work.

Negotiating royalties

Some people complain that royalty percentages for Authors are very low. However, such complaints usually arise because of a misunderstanding of the mutual risk nature of publishing. After all, the Publisher is taking all the financial risk and paying the upfront costs of producing a book, as well as paying the ongoing costs of promoting a book that may also be considerable. Also, a Publisher, as a commercial business, needs to realise a return on this investment – i.e., they also need to make a profit. Many books don't make a profit and it is usually the case that a Publisher only makes money on 20% of the titles it publishes. The Author, on the other hand, is shielded from the financial risks by the publishing contract and will continue to receive a royalty on every copy sold whether or not the Publisher has covered their costs or made a profit.

All terms in any contract are, of course, negotiable (within reason). There are a number of alternatives to the payment of a simple fixed percentage royalty on all copies sold.

Payment of a flat fee instead of a royalty

In some cases, the Publisher will buy the Author's copyright outright for a flat fee. The Author therefore gives up all rights in their work. This can be in the Author's interests if they don't want to take the risk of waiting for royalties based on sales and would rather take some money

up-front. It can also be in the interests of the Publisher if they can afford to add to their up-front financial investment in a book by paying a fee to the Author in return for their intellectual property. Of course, if the book becomes a bestseller then the Author might feel hard-done-by because the up-front fee turns out to be less than they would have earned in royalties. However, in some markets (for example, niche segments in academic publishing) sales are very low and Authors are writing in order to boost their academic or professional reputation rather than to make money. Therefore, receiving a guaranteed fee upfront can make sense for professionals and academics, as long as the Author's moral rights are respected (see our [White Paper on Copyright, Plagiarism and Permissions](#)).

Royalty advance

Another financial arrangement often agreed during contract negotiations is the royalty advance. This is most common in fiction publishing where the Author's only income is from writing books and/or when the idea for the book is so good or so timely that the Publisher is prepared to pay an advance on royalties to allow the Author to devote their time solely to writing the book in order to get it written quickly. Again, this is a financial risk for the Publisher and it is often the case that an advance is never earned back by subsequent royalties, which is why really big advances are usually only paid to Authors with a strong track record of successful titles. The advance is an upfront payment in expectation of royalties that will be paid during the period of copyright. Therefore, once the advance has been paid, the Author will receive no further payment until the advance has been earned back by the royalties due on sales. Most advances are small – more of a gesture of confidence in the Author than a salary to live on while writing – and advances are often paid in stages as motivation to encourage Authors to deliver their typescripts on time and according to the specification. For example, a proportion of the advance may be paid on signature of the contract, the next tranche on delivery of the typescript and the remaining amount on publication

Some contracts require the repayment of a proportion of the advance if the book fails to sell as well as expected within a certain period of time and, therefore, royalty payments are not sufficient to pay off the advance. A clause requiring the return of a proportion of the advance is only likely to be included in a contract for a book where the cost of production is high and, therefore, the corresponding financial risk for the Publisher is also high. For your average fiction title production costs are low and so fiction Publishers may be more relaxed about advances that are not earned back in their entirety

Escalator royalties

Sometimes the Publisher may consider offering an escalator royalty. This is a royalty where the percentage paid to the Author increases based on the number of books sold. For example:

16. The Publishers agree to pay the Author the following royalties and/or fees, in respect of book or sheet or electronic sales during the legal term of the copyright.
- (a) On the Publishers' own printed edition, or a printed edition manufactured by the Publishers for a third party, **seven per cent (7%)** of the Publishers' net receipts on the first 500 copies sold, **eight per cent (8%)** on copy sales 501 to 1000, and **ten per cent (10%)** on all copies sold thereafter.

Escalator royalties allow the Author to share in the success of the book should sales take off. They are also a way for Publishers to manage the finances of projects that are more risky than usual and/or more expensive to produce. The Publisher will start the escalator at a fairly low level to reduce the cost on the first copies sold and then increase the royalty once the Work has sold sufficient copies to cover its costs and has begun to make a profit.

OTHER CLAUSES RELATING TO AUTHOR PAYMENT

17. The Publishers may deduct from any amount due to the Author under this Agreement, any sum that the Publishers are or may be under statutory obligation to deduct in respect of any tax, duty, or other similar levy.
18. Royalty sums received are taxable and the Author is personally responsible for the payment of tax on all sums paid to her under the terms of this Agreement. The Author is not an employee of the Publishers and the Publishers have no responsibility to pay tax or National Insurance in respect of work carried out by the Author in relation to this Agreement.
- 19.
- (a) All sums due to the Author hereunder are exclusive of Value Added Tax (VAT), which shall, where applicable, be paid in addition at the rate in force at the time of payment.
- (b) Should the Author not be registered for VAT or neglect to provide details of the Author's VAT registration number, the Publishers shall not pay VAT on any sums due to the Author under this Agreement.
21. No royalties shall be paid on copies:
- (a) presented to the Author or to others, or the Press;
- (b) destroyed by fire, water, enemy action, in transit or otherwise;
- (c) sold at or below cost of production.
22. The Publishers shall render the first account of the work as at 31st December next following the date of first publication and subsequently once yearly as at 31st December and all monies due to the Author shall be paid to her within three (3) months of the said accounting date.
- Should a dispute arise over the payment of royalties where the certificate of the Publisher's accountants is not sufficient to settle the dispute the Author, upon written request and at his own expense, has the right to inspect the Publisher's books of account relating to the Work.
23. Should the Author receive an overpayment of royalties or fee arising from copies reported sold but subsequently returned the Publishers may deduct such overpayment and any other sums due from the Author from monies due to the Author under this Agreement.

There are a few other clauses in a standard contract that relate to Author payment. These are fairly self-explanatory:

- relating to taxation (17, 18 and 19 in the example above) - the Author is responsible for payment of tax on his or her royalty earnings and for notifying the Publisher if he or she is registered for VAT;
- relating to copies that have been printed but not sold (21) – the Publisher will not pay royalties on copies it has paid to have printed but that have not been sold, or sold at a loss, for whatever reason;
- relating to when royalties are paid to the Author (22) – usually once or twice a year;
- relating to any disputes that arise over the payment of royalties and the Publishers' accounting for royalty payments (22) – the Author has the right to inspect the Publishers' accounts relating to the Work and...
- relating to the overpayment of royalties to the Author (23) – instead of asking the Author to refund any overpayment the Publisher will deduct any overpayment from future royalties due to be paid to the Author.

CONCLUSION

A publishing contract is unique because it reflects the mutual risk relationship between a creator (the Author) of intellectual property (the Work) and the organisation that helps to realise the inherent value of the intellectual property (the Publisher). Intellectual property only has a financial value when it is copied and the copies are distributed and sold. The Publisher invests in making copies of the Work (printing), but also in adding value to the Work (by copy-editing, page design, proofreading, picture research, etc.) and in promoting the Work to realise as much value from the intellectual property as possible. This is a joint enterprise with the aim of a win/win outcome. Of course, the outcome could be lose/lose but the publishing contract reduces the losses of the Author (as the weaker party to the agreement) by ensuring they receive royalties on all copies sold, regardless of whether or not the Publisher has covered its costs or made a profit.

Judith Harvey, MD RHE Media Limited.

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