

# NOTES ON THE SAMPLE CONTRACT

Authors are advised to keep copies of all correspondence with publishers, no matter how trivial.

Where a telephone conversation takes place, take a note of the contents and include it with the publisher's file, then send a letter to the person with whom you spoke confirming what was said in the conversation.

Good luck.

The following explanations are given for clauses that are most often questioned by writers.

## **AGREEMENT:**

The term Agreement in this instance means contract. Once signed, a contract is legally binding upon both parties, author and publisher. No contract should be entered into lightly, no matter how eager one is to have one's work published. What you once give away, you may never be able to take back. It is very important to remember this.

## **COPYRIGHT:**

Copyright means actual ownership of the intellectual property. Copyright is vested in the author of a written work or the creator of a photograph or picture. A publisher does not buy the copyright when a contract is negotiated, he merely licences the right to publish the work. Authors are advised never to sell their copyright.

They are further advised to send a copy of the completed manuscript with their name, address, and date on the first page, by registered post addressed to themselves and sealed. Request that the post office stamp across the seal, and do not open the package when it arrives but put it away in a safe place or give it to your solicitor. This establishes beyond question the date of completion of the work - and could be important should anyone question your authorship at some future date.

## **DURATION AND SCOPE:**

Authors are advised against granting indefinite rights. Periods of ten, fifteen, or twenty years are most common.

## **EDITING:**

Editing is sometimes the most difficult aspect of the author/publisher relationship. An author is perfectly at liberty to reject editorial suggestions. Remember, you own the work. However, also remember that it is in the publisher's best interest to ensure that the work is as successful as possible. A good editor can substantially improve a work.

## **ADVANCE:**

Publishers, especially smaller publishers, sometimes claim that they do not pay advances. As with every other aspect of the contract, this too is negotiable. The size of any advance is based upon the initial print run and projected sales. It is not reasonable to expect a publisher to pay a larger advance than he feels the book will earn back. With this understanding, however, authors are advised to negotiate for the largest possible advance. Money paid to you farther down the line will probably be diminished by inflation. A sizable advance encourages the publisher to promote your book.

## **SCHEDULE OF ROYALTIES:**

The more established and successful a writer, the better position he or she is in to negotiate royalties. The figures shown in the Sample Contract are the minimum rates authors should

receive from a reputable publisher. Usually first time authors start at the bottom of the scale, but even so they should be mindful of the possibilities of negotiation upward as their careers progress.

Ideally the royalties should be based upon the list (gross price of the book and not net receipts).

### **List price**

is the price on the back of the book, the published price; net receipts is the money the publisher receives after booksellers' discount (usually 33.33% but often rising to 55%) has been deducted.

### **SUBSIDIARY RIGHTS:**

Depending upon the type of book, subsidiary rights may be extremely valuable, as in the case of a work subsequently being made into a motion picture. If a book has this potential, the author may wish to retain such rights for themselves, or ask for a larger advance if the publisher wants those rights. Authors should endeavour to offer the publisher only those rights, which the author believes the publisher can properly exploit. Subsidiary rights can be independently negotiated. Therefore, in the contract such rights should be differentiated, and not lumped together in one catch-all clause.

(n) e-books and electronic downloads. 50%

### **REPORTS AND PAYMENTS:**

From the author's point of view it is preferable for the publisher to calculate and pay royalties twice a year. This is commonplace practice abroad. Biannual accounting cuts down the delay between payments to the author. If payments are made yearly, then monies earned on a title in January will not be paid until at least March of the following year - during which time, the interest on the money keeps mounting up and accruing to the publisher's pocket. It will not be passed on to the author. Writers are advised to keep detailed records of all monies due and received, and the dates upon which payments are due.

### **REVERSION OF RIGHTS:**

An out-of-print title earns the author no money. If the title goes out of print for any reason, send a written request to the publisher asking that they either reprint within the period specified in the contract, or revert rights to you. It is perfectly possible to re-sell out-of-print titles; another publisher may want them.

### **TERMINATION OF CONTRACT:**

This can be the most important clause in a contract. There are many reasons why an author may wish to terminate a contract. Once a contract is signed, however, and therefore legally binding, it may only be terminated by mutual agreement or if one side can prove the contract has been breached. It is much easier to get into trouble than get out of it, so be sure before you sign.

### **UNACCEPTABLE CLAUSES:**

Experienced authors or their agents routinely delete unacceptable clauses from offered contracts. The first contract a publisher offers a beginning writer is likely to be very one-sided on the publisher's behalf. Do not simply sign it, thinking you will never be offered another one. Study it carefully.

### **OPTION:**

Many publishing contracts contain some form of option clause. This gives the publisher the privilege of publishing the author's next book or books - if the publisher wishes to do so. But be advised: this does not assure the author of another sale! It merely means that the next book will be tied up for a period during which it might well be sold more profitably elsewhere. Option clauses are one-sided agreements binding authors but not publishers. The Irish Writers' Union recommends therefore that the author strike out any form of option clause in an offered publishing contract. Simply draw a line through it. Most publishers will accept this refusal with no further comment.

**OVERPAYMENT:**

Any reference to overpayment in a contract is another way of getting the author to agree to joint accounting - the deduction of sums owing under other contracts. Therefore a writer who writes more than one book with a publisher may find that his advance for the second book is charged back to the royalties of the first one, so in effect he may never receive any royalties. Each publishing contract and book should be treated as a separate venture. Do not accept any clause that allows for joint accounting under any name, or allows the publisher to deduct sums owed by the author under another contract. Remember, the publisher is a business person who has agreed to publish the book at their risk and expense (see Clause 13) MANDATED PUBLICATION based on their professional judgment and experience. If one book does not make money, it was the risk the publisher contractually agreed to take. The author should not have to pay for it out of other books.