

# Use Your Book Contract Advantageously

by John B. McHugh

**M**ost new books start with the signing of a book contract by the publisher or acquisitions editor with the author. The contract provides tangible evidence that there is a mutual commitment to publish the book. In addition:

**1. The book contract establishes the responsibilities of each party.** Publishing is a complex business. The roles of the publisher and author must be specified, in writing, if the publishing venture is to succeed.

The contract outlines who does what, and when, during the life cycle of the book. It includes provisions regarding the date and delivery of a satisfactory manuscript; how the cover copy and illustrations will be handled; how revisions will be done; and the publication date. The contract also states how and when the author is paid royalties, how these are calculated, whether an advance will be paid, how audits will be done, how many copies of the book the author will receive, what will happen when it goes out of print, and so on. The contract should cover all of the business terms and the recurring tasks of book publishing.

**2. The book contract defines the rights granted or reserved by the author.** Rights have value. The publisher must acquire the right to publish the book. With electronic distribution of content growing in popularity and economic importance, the contract should also specify which subsidiary rights are granted to the publisher. In addition, provisos should discuss copyright infringement and competing works.

**3. The book contract makes the agreement legal.** It is enforceable in a court of law (though the last thing you and your authors want is to wind up in court). It specifies the governing laws or jurisdiction for the contract, means for arbitration or mediation of conflicts, the liability or indemnity of those involved, and the warranties of each party to the contract.

## Undesirable scenarios

A publisher who is an author, or aspires to be one, may suffer “role confusion” in contract negotiation.

More common is the scenario that an inexperienced editor has a “soft heart” and wants to be generous with authors.

One publisher wanted to be financially generous to authors to make up for what he felt his company lacked when compared to the competition. (He made the classic mistake of competing for authors on financial terms, rather than on acquisition savvy and skill.) He offered royalties five percent higher than those of his competitors. This made the difference between a decent profit and a marginal one, putting the company in a precarious position. One option is to renegotiate better terms, but this is not very appealing—particularly if you are the one who must renegotiate all those contracts.

Use a standard book contract to discourage open-end negotiation with authors. Remember, the job of the publisher is to make money for the company, not necessarily to represent the author.

Another publisher chooses to pay an escalator or sliding scale royalty—for example, 10 percent of the net receipt on the sale of the first 5000 copies, 12.5 on sales of the next 5,000 copies, and 15 percent on sales over 10,000 copies. While the author earns a royalty from the start, the publisher may not earn any profit until after many thousands of copies are sold. Publishing is a risky business. Many books never sell out the first printing. A large number of books earn no profit. Therefore, publishers need all the profits from successful books to counter-balance those books that lose money. After the break-even point is reached, the publisher is entitled to increasing profit margins as a reward for the risks taken in publishing the book.

The best publishers and editors know how to use contracts to their advantage, just as concert violinists know how to play the violin. They understand every aspect of the instruments they use. ❖

***He made  
the classic mistake  
of competing  
for authors  
on financial terms.***

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