

## 18. READING A CONTRACT

When you do finally receive a publisher's contract, you may feel your heart sink. It runs to several pages of single-spaced text, highly flavored with legalese and organized in a daunting sequence of numbered paragraphs and subparagraphs. Who knows what thorns lurk in such a thicket?

Actually, not too many. Most of your contract is standard "boilerplate" text that protects you as much as the publisher. It is often possible, even for a novice, to negotiate specific aspects of the contract.

Still, it helps to know what you're getting yourself into, so let us take a look at some of the key passages you're likely to find in your contract.

### Delivery Of Satisfactory Copy

If you're selling your novel on the strength of sample chapters and an outline, the publisher wants assurance that you'll submit the full manuscript (often with a copy), at an agreed-upon length, by an agreed-upon date. If your full ms. doesn't measure up, or arrives too late, the publisher has the right to demand return of any money you've received.

In practice the publisher is usually much more flexible. He may bounce your ms. back to you with a reminder that you don't get the rest of your advance until the ms. is "satisfactory." He (or more likely the editor) will tell you in exquisite detail what you still need to do to achieve "satisfactory" status. A late ms. also means you won't collect the balance of your advance until it arrives, and it may also cause delays in final publication – as I learned to my sorrow with *Greenmagic*.

### Permission for Copyrighted Material

If you want to include the lyrics of a pop song in your novel, or quote something as an epigraph, it's up to you to obtain the rights to such material, and to pay for them if necessary. If you leave it to the publisher, he'll charge you; if he can't get permission, and the novel doesn't work without such material, the deal is off and you have to repay any advance you've received. Obviously, this is an extreme case; normally you just drop the lines from the song or poem, and carry on.

### Grant Of Rights

You are giving the publisher the right to make copies of what you've written. These copies may be in hardcover, softcover, audio cassette, filmstrip, comic book, or whatever. You are also specifying in which parts of the world the publisher may sell such copies. For example, a sale to a British publisher may specifically exclude North America, leaving you free to sell North American rights separately.

You may also be giving the publisher rights to sell foreign translations, to print excerpts in other books or periodicals as a form of advertising, or to sell copies to book clubs. Normally such sales require your informed, written consent.

### **Proofreading and Author's Corrections**

You agree that you will proofread the galleys or page proofs of your novel and return the corrected pages promptly. If your corrections amount to actual revision of the original manuscript, and will require re-typesetting more than 10 per cent of the book, the publisher will charge you for such costs. This can very easily destroy any income you might have earned from the book.

### **Advances and Royalties**

This spells out how much the publisher will pay you, and when. The most common agreement is payment of one-third of the advance on signing the contract; one-third on delivery of a satisfactory complete ms.; and one-third on publication date. You may be able to negotiate half on signing and half on delivery; otherwise, you are in effect lending the publisher some of your advance until a publication date that may be over a year away.

Royalties are generally a percentage of the list price of the book. For hardcover books, the usual royalties is ten per cent of list price. So a novel retailing for \$24.95 will earn its author \$2.50 per copy. For mass-market paperbacks, royalty rates can range from four per cent to eight per cent, usually with a proviso that the rate will go up after sale of some huge number of copies – 150,000 seems to be a popular target. A paperback selling at \$7.95, with an eight per cent royalty, will therefore earn you about 64 cents. A “trade” paperback, intended for sale in regular bookstores rather than supermarkets and other mass outlets, will probably earn a comparable rate; the list price, however, will likely be higher and the number of copies sold will be lower.

Whatever the royalty rates, you're likely to get only half as much for sales to book clubs or overseas markets. This is especially painful for Canadian authors with American publishers: sales in your own country, as “foreign” sales, earn only half the U.S. royalty rate.

You will also agree to split the take from certain kinds of licensing sales. For example, if your novel is a hardback and some other house wants to bring out a paperback edition, you can normally expect a 50 per cent share of what the paperback house pays. Sometimes a paperback house will license a hardback edition (in hopes of getting more critical attention for your book and hence selling more copies in paperback eventually); in such a case you should expect 75 per cent of the deal.

If you can possibly avoid it, do *not* agree to give your publisher a share of any sale to movies or TV. A film or TV show based on your novel will boost the publisher's sales quite nicely; he doesn't need a slice off the top of a deal that will surely pay you more than the publisher did. But if the book seems highly unlikely to interest Hollywood, you might offer a slice of film rights in exchange for a richer advance, with a proviso that an actual film or TV sale will also produce an additional chunk of money from the publisher.

The publisher will normally not charge for the production of versions of your novel in Braille or other formats for the handicapped. So you will get no money from this source.

The publisher should agree to supply you with two royalty statements a year. Each will cover a six-month reporting period, and each should arrive about 90 days after the close of that period. So a statement for January-June should reach you at the end of September. This will probably be a computer printout, and may be confusing. But it will indicate the number of copies shipped, the number returned unsold by booksellers, and the number presumably sold. The publisher will hold back on some of the royalty "against further returns." Whatever remains is the actual number on which the publisher owes you money.

Chances are that your advance will have consumed any potential royalties for the first reporting period, and perhaps for the second as well. Once you have "earned out" your advance, however, you should expect a check with each royalty statement.

Do *not* sign a contract that does not explicitly promise you at least two royalty statements a year. Some publishers promise a statement only after the novel has earned out its advance. This means you may go for years – or forever – without knowing what your sales have been.

### **Author's Warranties and Indemnities**

Here you are promising that this is indeed your work, that it isn't obscene, a breach of privacy, libelous, or otherwise illegal. If you do get into trouble, you agree to cooperate with the publisher's legal defense, and you agree to pay your share of the costs instead of asking the publisher, booksellers, or others to do so. If the publisher's lawyer thinks the manuscript poses legal problems, you agree to make the changes required to solve those problems – or to allow the publisher to do so.

You may find an insurance rider as part of your contract; this is intended to protect both you and the publisher from suffering total financial disaster if you get caught in a losing lawsuit.

### **Copies to Author**

You will get a certain number of free copies, and will pay a reduced rate for more copies. That means you will still pay for those copies, and you should.

### **Option Clause**

Pay attention to this one! This says you are giving the publisher right of first refusal on your next book (or at least your next book of this particular genre). The option clause means the publisher will give the next book a close, prompt reading. You should expect a response within 90 days, but some contracts specify 90 days after publication of your current book. That means you might have to wait for months, maybe over a year, until the publisher sees the initial reaction to your first book.

In practice, though, you probably will get a quicker response than that. If the publisher does make you an offer, you have the right to refuse it; you can then take your second book to any other publisher you like. However, you can't sell it to anyone else unless you get better terms for it than your original publisher offered.

You may well find yourself trapped as a result. If you need money in a hurry, you may feel you've got to accept a bad offer rather than spend months or years shopping your ms. around the market until you find a more generous publisher. And then, of course, your second contract will include an option clause for the *third* novel...

Your best hope in this case is that sales of the first book will warrant a heftier advance on the second or third book. And if the publisher still won't cooperate, you can then go to another publisher with at least some respectable sales figures that show you deserve a better deal.

### **Going Out of Print**

If the publisher lets your novel go out of print, you can make a formal request for it to be reprinted; if he doesn't want to, you can then demand that all rights revert to you. You are then free to sell the book to another publisher. (I have done this a couple of times. You don't make as much money on the resale, but at least the book stays out on the market longer.) You may be able to acquire the plates or film from which copies of your novel were made, making it possible for a new publisher to bring your book out quite cheaply.

You will probably not make any money from "remaindered" copies that the publisher may sell to a book jobber at a deep discount. In some contracts, however, the author may indeed receive some percentage of such sales. It's also possible to buy copies of your book at a similar low price.

## **A Word of Advice**

If at all possible, go over the contract with the editor or publisher, asking whatever questions arise. Then take your contract to an agent, lawyer, or professional writer. Chances are that it's perfectly okay. But even if you don't find something sneaky in the fine print, you'll have a clearer understanding of what you and your publisher have committed yourselves to. If something arises later on, like a problem over the option clause or the frequency of royalty statements, it won't come as a total shock.

### **Assignment:**

Finish your novel, send out your query letters, and don't stop until a publisher finally accepts it.

From Write a Novel (<http://crofsblogs.typepad.com/novel/>), a resource created by Crawford Kilian, Communications Instructor at Capilano College, North Vancouver BC.

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