Publishers Association

Publishers Association Code of Practice on Author Contracts

Non-Binding Guidelines for book publishers

Note: This Code of Practice applies only to agreements under which an author assigns or licenses an interest in the copyright of a work to a publisher and does not apply to agreements whereby an author invests money in the publication of a work.

A constructive and co-operative relationship between book authors (and the agents and representatives acting for them) and their publishers is vital to successful publishing. Dissatisfaction may arise, however, perhaps because a title is not the success the author and publisher hoped for, or because of lack of clarity or misunderstandings of the publishing contract. In order to help eliminate the causes of such misunderstandings, this Code of Practice attempts to address some of the areas which may lead to avoidable conflict, and is recommended to members of the Publishers Association in their dealings with authors.

1) The publishing contract must be clear, unambiguous, and comprehensive, and must be honoured in both the letter and the spirit.

Matters which particularly need to be defined in the contract include:

i) a title which identifies the work or (for incomplete works) the nature and agreed length and scope of the work;

ii) the nature of the rights conferred, the ownership of the copyright (an assignment or an exclusive licence), whether all publication rights including publication in digital form are included, and the formats, territories and languages covered;

iii) the time scale for delivery of the manuscript and the time scale for publication (which may need to be held over for market reasons);

iv) the payments, royalties and advances (if any) to be paid, what they relate to, and when they are due;

v) the provisions for sub-licensing;

vi) the author's responsibility to warrant that the content is original, legal and infringes no other rights, and to avoid any competing publishing.

vii) the responsibility for preparing the supporting materials (e.g. indexes, illustrations, content for accompanying websites or other ancillary material etc.), and for obtaining permissions and paying for the supporting materials in which the copyright is held by third parties;

[1] The 2010 version replaces the 1997 and 1982 versions. Reference to the Informal Arbitration Scheme which is no longer in operation was removed in 2021.

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viii)the term of the contract if appropriate, and any termination and reversion provisions.

Should the parties subsequently agree changes to the contract, these should be recorded in a separate written memorandum or side letter, and a copy kept with the main contract.

2) **The contract should be clear about ownership of the copyright.**

In some fields of publishing, such as trade publishing, an exclusive licence should be sufficient to enable the publisher to exploit and protect most works effectively. In other fields of publishing (e.g. encyclopaedic and reference works, certain types of academic works, publishers' compilations edited from many outside contributions, some translations and works particularly vulnerable to copyright infringement because of their extensive international sale) it may be appropriate for the copyright to be vested in the publisher, to make it easier for the publisher to protect the work as a whole.

3) **The publisher should be aware of the author's moral rights.**

The author's moral rights are personal statutory rights in the UK and elsewhere in the EU in particular the right to be credited as the author whenever the work is exploited commercially (the right of paternity), and the right to object to derogatory treatment of the work (the right of integrity). A publisher drafting a publishing contract should be aware of these rights. In addition, the right of paternity may require formal "assertion" by the author, and this is usually most conveniently done by the publisher on the book or menu page itself, on the author's behalf.

However, the rights of paternity and integrity do not apply to certain works, including collective works such as encyclopaedias, dictionaries or year books, or works created in the course of employment. In addition, the 1988 Copyright Designs and Patents Act provides for the possibility of waiver of the author's moral rights in appropriate circumstances, and if and when such circumstances are likely to arise (e.g. in the case of a sale of film or TV rights) the publisher should have the right to ask for a formal signed waiver, either wholly or partially, depending on the position. Adequate time should be allowed in the publishing timetable to permit discussion of the need for any waiver, and if necessary commissioning of an alternative author or contributor,

4) **The publisher should be willing and take any opportunity to explain the terms of the contract and the reasons for each provision, particularly to an author who is not professionally represented.**

5) **Where appropriate the publisher must give the author a proper opportunity to share in the success of the work.**

In general, the publishing contract should seek to achieve a fair balance of reward for author and publisher, although there are publishing circumstances (e.g. academic publishing), where publication may be its own justification, and royalties and fees may not be affordable or appropriate. On occasion it may be appropriate, when the publisher is taking an exceptional risk in publishing a work, or the origination costs are unusually high, for the author to assist the publication of the work by accepting initially a low royalty return. In such cases, it is also appropriate for the publisher to agree that the author should share in any eventual success by, for example, agreeing that royalty rates should increase, perhaps via a sliding scale, to reflect that success (although royalty accelerators may not be possible on e-editions, where one unit is not necessarily one sale).

If under the contract the author receives an outright or single payment, but retains ownership of the copyright, the publisher should be prepared to share with the author any income derived from a use of the work not within the reasonable contemplation of the parties at the time of the contract, e.g. by making terms for other distribution and licensing subject to mutual agreement in due course.

6) **The publisher must handle manuscripts promptly, and keep the author informed of progress.**

All manuscripts and synopses received by the publisher, whether solicited or unsolicited, should be acknowledged promptly on receipt. (If the publisher does not acknowledge unsolicited materials, it should make that clear on its website.) The author may be told at that time when to expect to hear further, but in the absence of any such indication at least a progress report should be sent by the publisher to the author within six weeks of receipt. A longer time may be required in the case of certain works, e.g. those requiring a detailed assessment, particularly in cases where the opinion of specialist readers may not be readily available, and in planned co-editions, but the author should be informed of a likely date when a report may be expected.

It is important, however, for the publisher to know if the manuscript or synopsis is being simultaneously submitted to any other publisher.

7) **The publisher must not cancel a contract without good and proper reason.**

It is not easy to define objectively what constitutes unsuitability for publication of a commissioned manuscript or proper cause for the cancellation of a contract, since these may depend on a variety of circumstances. In any such case, however, the publisher must give the author sufficiently detailed reasons for rejection. Some of the most common reasons are set out at (a)-(c) below.

When a publisher requires changes in a commissioned manuscript as a condition of publication, these should be clearly set out in writing.

a) Time

If an author fails to deliver a completed manuscript according to the contract or within the contracted period, the publisher may be entitled (inter alia) to a refund of advances already paid on account. However, it is commonly accepted that (except where time is of the essence) advances are not reclaimable until the publisher has given proper notice of intent to cancel the contract within a reasonable period from the date of such notice. Where the advance is not reclaimed after the period of notice has expired, it is reasonable for the publisher to retain an option to publish the work.

(a) Standard and quality

If an author has produced the work in good faith and with proper care in reasonable accordance with the publishing proposal and brief, and the terms of the contract, but the publisher decides not to publish on grounds of quality, the publisher should not expect to reclaim on cancellation that part of any advance that has already been paid to the author. If, by contrast, the work has not been produced in good faith and with proper care, or the work does not conform to what has been commissioned in terms of content, level and style, the publisher may be able to reclaim the advance

(b) Defamation or illegality

The publisher is under no obligation to publish a work that there is reason to believe is defamatory or otherwise illegal.

Compensation

Depending on the grounds for rejection,

1) (if the grounds are not reasonable) the publisher may be liable for further advances due and an additional sum may be agreed to compensate the author, or

2) (if the grounds *are* reasonable) the author may be liable to repay the advances received.

In the former case, the agreement for compensation may include an obligation on the author to return advances and compensation paid (or part of them) if the work is subsequently placed elsewhere.

Resolution of disputes

Ideally, terms will be agreed privately between the parties but, in cases of dispute, parties should first consider whether the matter can be resolved through a mutually agreed informal/ADR procedure or, if this cannot be agreed, may elect to submit the matter for resolution through the courts under normal legal procedures.

8) **The contract must set out the anticipated timetable for publication.**

The formal contract must make clear the time scale within which the author undertakes to deliver the complete manuscript, and within which the publisher undertakes to publish it. It should be recognised that in particular cases there may be valid reasons for diverging from these stated times (such as a need to clear extra permissions, or legal problems such as libel), or for not determining strict time scales and each party should be willing to submit detailed reasons for the agreement of the other party, if these should occur.

9) **The publisher should be willing to share precautions against legal risks not arising from fault or carelessness by the author.**

For example: libel, breach of privacy, confidentiality, data protection, etc. While it remains the primary responsibility of the author to ensure that the work does not contain illegal content, the publisher may also be liable. Legal vetting therefore demands the closest co-operation between authors and publishers, in particular in sharing the costs of reading for libel or of any insurance considered to be desirable by the parties.

10) **The publisher might consider assisting the author by funding additional costs involved in preparing the work for publication.**

If under the contract the author is liable to pay for supporting materials, e.g. for permissions to use other copyright material, for the making and use of illustrations and maps, for costs of indexing, etc. the publisher may in certain circumstances, depending on the type of publication and on the nature of the compensation paid to the author, be willing to fund such expenses, to an agreed ceiling, that could reasonably be recovered against monies that may subsequently become due to the author.

11) **The publisher must ensure that the author receives a regular and clear account of sales made and monies due.**

The period during which sales are to be accounted for should be defined in the contract and should be followed, after a period also to be laid down in the contract, by a royalty statement and a remittance of monies due. Publishers should always observe these dates and obligations scrupulously. Accounts should be rendered at least annually, although some are able to pay more frequently.

The publisher may be prepared, where appropriate and on request, to disclose details of the number of copies printed, on condition that the author (and the agent) agree not to disclose the information to any other party, apart from professional advisers if required.

Publishers should be prepared to give authors indications of sales to date, which must be realistic bearing in mind frequency of accounting, unsold stock which may be returned by booksellers or stock supplied on consignment.

12) **The publisher must ensure that the author can clearly ascertain how any payments due from sub-licensed agreements will be calculated.**

Agreements under which the calculation of the author's share of any earnings is dependent on the publisher's allocation of direct costs and overheads can result in misunderstanding unless the system of accounting is clearly defined. Co-editions, where the publisher is investing in printing for licensees, should be distinguished from arms-length licences where the publisher would not normally allocate direct costs and overheads.

13) **The publisher should if possible keep the author informed of important design, promotion, marketing and sub-licensing decisions.**

Under the contract, final responsibility for decisions on the design, promotion and marketing of a book is normally vested in the publisher. Nevertheless, the fullest reasonable consultation with the author on such matters is generally desirable, both as a courtesy and in the interests of the success of the book itself. In particular the author should, if interested and if willing to make themselves available, be consulted about the proposed jacket, jacket copy and major promotional and review activities, be informed in advance of the publication date, and receive advance copies by that date. When time permits, the publisher should advise the author about the disposition of major sub-leases, and let the author have a copy of such licence agreements on request, or (where confidential) supply disclosable details.

14) **The publisher should inform the author clearly about opportunities for amendment of the work in the course of production.**

The economics of typesetting and printing can make the incorporation of authors' textual revisions after the book has been set extremely expensive, even where the author is supplying text on disc. Publishers should always make it clear to authors, before a manuscript is put in hand, whether proofs are to be provided or not, on whom the responsibility for reading them rests and what scale of author's revisions would be acceptable to the publisher. If proofs are not being provided, the author should have the right to make final corrections to the copy-edited typescript, and the publisher should take responsibility for accurately reproducing this corrected text in type.

15) **It is essential that both the publisher and the author have a clear common understanding of the significance attaching to the option clause in a publishing contract.**

The option on an author's work can be of great importance to both parties. Options should be carefully negotiated, and the obligations that they impose should be reasonable, clearly stated and understood on both sides. Option clauses covering more than one work may be undesirable (and may be unenforceable) and should only be entered into with particular care.

16) **The publisher should recognise that the remaindering of stock may effectively end the author's expectation of earnings.**

Before a title is remaindered, the publisher should use all reasonable endeavours to inform the author and offer all or part of the stock to the author on the terms expected from the remainder dealer. Whether any royalty, related to the price received on such sales, should be paid is a matter to be determined by the publisher and the author at the time of the contract. In appropriate areas of publishing, the question of whether remaindering of stock should trigger a reversion or partial reversion of rights to the author may need careful thought, particularly if the title might subsequently be considered for inclusion in a print-on-demand programme or be available as an ebook.

17) **The contract must set out reasonable and precise terms for the reversion of rights.**

When a publisher has invested in the development of an author's work on the market, and the work is a contribution to the store of literature and knowledge, and the publisher expects to market the work for many years, it is reasonable to acquire publication rights for the full term of

copyright, on condition that there are safeguards providing for reversion in appropriate circumstances.

The circumstances under which the grant of rights acquired by the publisher will revert to the author (e.g. fundamental breach of contract by the publisher, or when a title has been out of print, has not been available on the market for a stipulated time, or even perhaps is selling below an agreed low level) should form a part of the formal contract. It should be noted that it is increasingly common for publishers to be able to maintain availability of titles via print-on-demand and e-book technology, thereby reducing the likelihood of books going out of print, although whether this interpretation is reasonable or not may depend on the circumstances. Reversion should not normally apply where the copyright has been purchased via a full assignment, or to multi-authored or edited works, particularly where these go through multiple editions.

18) **The publisher should endeavour to keep the author informed of changes in the ownership of the publishing rights and of any changes in the imprint under which a work appears.**

Most publishers will expect to sign their contracts on behalf of their successors and assigns, just as authors will sign on behalf of their executors, administrators, and assigns. But if changes in rights ownership or of publishing imprint subsequently occur, a publisher should certainly inform and, if at all possible, do what they reasonably can to ensure publishing continuity for an author in these new circumstances.

19) **The publisher should be willing to help the author and the author's estate in the administration of literary affairs.**

For example, the publisher should agree to act as an expert witness in questions relating to the valuation of a literary estate.

20) **Above all, the publisher must recognise the importance of co-operation with the author in an enterprise in which both are essential.**

This relationship can be fulfilled only in an atmosphere of confidence, in which authors get the fullest possible credit for their work and achievements.