

The Authors Guild Fair Contract Initiative: A Fresh Look at the “Standard” Contract

Times have changed in the world of publishing, but the “standard” book contract has not kept up. It’s filled with terms, conditions, and language that would be recognizable to authors of a century ago, remnant of a bygone era when e-books, print-on-demand, deep pricing discounts, and online booksellers weren’t even a gleam in the eye. At the same time, new overreaching clauses have been added to insulate the publishers from any potential loss, placing all risk on the author. Yet today’s authors are often asked to sign these standard agreements “no questions asked,” and if they question author-unfriendly terms, they are often told the clauses are “not negotiable.”

In April 2015, the Authors Guild conducted its first major member survey since 2009. Though the complete results are still being compiled, our preliminary findings suggest that full-time and part-time U.S. authors have experienced a significant decrease in writing income over the last five years. Median writing-related income decreased 24% in that time frame—to only \$8,000, with full-time authors’ median income down 30%, from \$25,000 to \$17,500. Authors who have been writing between 25 and 40 years have seen the greatest drop in income, from a median of \$28,750 to just \$9,500. While there are many reasons for this decline in income, unfair terms in publishing agreements don’t help. Notably, during the same period, publishers’ revenue has seen steady annual growth. There’s something very wrong about that disparity.

We’re launching the Authors Guild Fair Contract Initiative to take a fresh look at the standard book contract. Our guiding principle for this new initiative is to restore contractual balance to the author-publisher relationship and help authors achieve a fair return for their efforts.

The traditional publishing enterprise was conceived as a joint venture, with authors and publishers working as partners to produce and distribute books. In the pre-digital climate, this meant that publishers split their profits more or less equally with authors. Publishers earned an equal split of profits as compensation for their efforts in shepherding a book through the publishing process, from creation to distribution to sub-licensing. But that is far from today’s reality.

Many publishers are doing less than ever for their authors. In many cases the companies provide less editing, little to no marketing, and no promotional budget. Instead, they ask authors to do their own marketing by engaging in time-consuming social media campaigns. Rather than compensate authors for this additional work, publishers usually insist on keeping a whopping 75% of income from e-book sales. That’s just one of many unacceptable policies.

In the coming months, the Authors Guild will address the major inequities and critical issues in many boilerplate contract terms. Here are just some of the unfair terms in today's standard book agreements:

- In exchange for some money, you give the publisher all rights to your book for 35 years—or your lifetime plus 70 years (let's just call it “forever”) if you or your heirs forget to terminate after those first 35.
- The publisher gets to reject your manuscript for any reason or no reason, and if that happens, you have to give back all the money you've received before you can publish the book with somebody else.
- The publisher can publish your book when the company gets around to it, which may take as long as two years from the time it accepts your manuscript—or even longer. You have no control, and you may have to wait for the last part of your “advance” until the book finally appears in print.
- If you are even one day late delivering the work (time is of the essence, it seems, only when it comes to the author), the publisher can opt to terminate the agreement and ask for the advance back.
- You can't publish another book under your name or even a pseudonym anywhere in the world until this one is published—even if the publisher has put it off.
- You have to offer the publisher the rights to your next book, but the publisher can wait to decide whether to offer you a deal on it until two months after this one comes out.
- You have no say in what the cover, jacket flap, and ad copy will look like.
- If the publisher does anything you don't happen to like, such as assign you an incompetent editor, fail to exploit subsidiary and foreign rights, print too few copies to satisfy customer demand, forget to register your copyright, consistently forget to pay you on time, or go bankrupt, you have no real recourse.

Like authors, publishers have had to adapt to the new realities of the digital age; one unfortunate way they have adapted is by squeezing the author. We hope that publishers begin to consider the welfare of authors generally—and the future of authorship—as part of their business plans. Otherwise authors will become a dying breed. If authors can't make a living producing works of quality, there will be very, very few people who can afford to write books.

A fair deal for authors should be an essential part of the strength and diversity of our literary culture. It is time for publishers to eliminate one-sided agreements and policies that are patently unfair. We hope the Fair Contract Initiative can be the first step in that process.