PART TWO

PUBLISHING AGREEMENTS

In a royalty agreement between author and publisher what rights are usually controlled by the publisher?

(a) The exclusive right, during legal term of copyright or such other term as shall be agreed, of producing, publishing and selling the work in volume form in the original language throughout the territory determined with the author.

(b) Book club, cheap edition or paperback rights leased to another publisher within the country or territory determined, on which sales he will pay the author an agreed percentage of his receipts.

(c) Anthology quotation rights, digest and condensation rights, one-shot periodical or newspaper rights, strip cartoon rights, mechanical reproduction rights; the proceeds from which he will share with the author.

These rights are known as 'volume rights'.

What other rights need to be considered?

(a) Foreign rights (i.e. the right to publish the work in a country or territory outside that normally covered by the publisher).

(b) Translation rights.

(c) Serial rights.

(d) Film, broadcasting and television rights.

(e) Advertising or other commercial use of the work or material based on the work.

These rights are known as 'subsidiary rights', and are usually handled by the publisher on behalf of the author, the publisher retaining an agreed percentage of the proceeds from their sale.

Further, in countries where more than one language is used in the education system, it is the usual practice for the publisher automatically to have first option on the translation rights in all the languages involved, either to publish himself or in conjunction with a publisher whose expertise is in a particular language.

Are there accepted or standard royalties for particular kinds of book?

Not usually, though 10% of the published or selling price of the book is often suggested as a 'normal' figure, except in the case of heavily illustrated books, workbooks, some primary textbooks, translations and adaptations. Royalty payments are calculated as a percentage either of the selling price of the book or of the net receipts from sales, and are normally paid once or twice a year. The rate of royalty is just one of the factors which the publisher has to take into account when computing the price of the book. A higher rate of royalty can mean a higher price and thus lower sales. So what matters to the author is not so much the rate of royalty as the ultimate rewards he may expect. The publisher can help to establish good relations with his author from the start by explaining how the rate of royalty has been worked out and what it means in terms of ultimate reward for the author's efforts.

What about advance payments to the author?

The offer of an advance against royalties is standard practice, and it is usually paid in two or three instalments; e.g. on signature of contract, delivery (or approval) of manuscript, and publication. The advance gives the author some immediate return for his work, encourages him to get on with the job, and reassures him of his publisher's good intentions. The actual amount of advance payment is negotiable between the two parties.

Is the author bound to supply illustrations?

Not unless this is specifically stated in the agreement, which it might be if the book is to be illustrated with photographs, in which case it must be clearly defined whether the payment of copyright fees is the responsibility of the author or the publishe. In the case of a technical work the author may well be asked to supply rough drawings of the diagrams and/or visual references for the artist to follow.

Does the author have any say in the design, illustration or production of the book?

These aspects of the publication of the book are normally left to the sole discretion of the publisher. But especially in the case of a technical work or where the publisher does not have a skilled editorial staff, the author should be invited to check and comment upon the illustrations, their positioning and the captions.

What other factors should an author bear in mind when discussing the contract?

(a) The publisher should undertake to publish the work within a specified period (e.g. 12 or 18 months) after delivery or approval of the manuscript.

(b) The author should be entitled to receive six free copies of the work on publication, and to buy further copies for his own use at trade terms.

(c) In the event of the book going out of print and the publisher (after being given reasonable notice by the author) is unable or unwilling to issue a reprint, all residual rights (including that of publication) should revert to the author.

(d) The regular royalty statement should specify how many copies of the book have been sold; it might also state how many remain in stock.

What further points should be borne in mind?

(a) The author should undertake to deliver his manuscript on or before an agreed date.

(b) No royalty will be paid on gratis copies or copies given away for review or exhibitions, or as aids to sales.

(c) If at any time in the opinion of the publisher the book ceases to have a remunerative sale, he should be entitled to dispose of the stock in any way he chooses, paying the author a percentage of any money received for the stock. However, before doing so, he should make an offer of the stock to the author, and he should only proceed if this offer is not accepted within a short period.

(d) The author should undertake that his work contains nothing that is libellous or violates copyright, and that he will hold the publisher blameless in the case of any claim or action in these respects.

(e) The author shall pay for any alterations he makes to the work once it has been set in type above an agreed percentage of the cost of setting the original manuscript.

(f) Assuming he is receiving a royalty, the author should be prepared, without further payment, to up-date or revise the work for subsequent editions.

(g) The author should undertake to give first offer to the publisher of his next book of the same length and character.

(h) The author should undertake not to publish any other work by him which might directly or indirectly affect the sales of the work which is the subject of the contract.

What happens if there should ultimately be a disagreement between the two parties over the interpretation of any point in the contract?

It is usual for the contract to include a clause to the effect that in the case of any disagreement the matter shall be referred to two independent arbitrators, one to be named by each party.