

CONTRACTS FOR AUTHORS

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[155] Over many years the Australian Society of Authors, and in particular, Barbara Jefferies, has undertaken groundbreaking working in developing pro-forma publishing contracts for use by writers.

The first edition of this book was published in 1983. The current edition is the third, and includes significantly updated content to accommodate recent developments such as the introduction of *Copyright Amendment (Digital Agenda) Act 2000* and the Moral Rights Bill 2000.

The publication in its earlier editions has served a vitally important function in redressing the fundamental imbalance in negotiating position between writers and publishers.

It is tremendously difficult for unrepresented writers to engage in any significant negotiation on the detail of publishing contracts, which are generally drafted in language which is impenetrable to the lay reader. This work is intended to put forward draft contracts and clauses which are favourable to the writer. It is also work which will assist publishers in better understanding their own contracts. Writers often make an assumption that publishers understand the detail of their own contracts. This is not always the case.

The step forward by writers in granting significant exclusive licences or assignments in their works to publishers is an important personal and cultural step. Contracts later regretted can shorten literary careers. There is an obvious mutual interest in publishers and writers signing contracts which are fair to both parties. Considered

contracting is an important attribute in a successful and well managed literary career. But all too often valuable rights are let go too easily. Once the publishing contract is signed, there is often no going back by the writer in trying to recover lost positions. Negotiating to reserve rights which are not likely to be fully exploited by the publisher is of vital importance. There are many cases in Australian publishing where reserved rights have proved to be a lot more lucrative to the writer than royalties paid under the grant of primary publishing rights. For example, film and television rights ought to be reserved by writers where possible (and appropriate — particularly in cases where publishers lack the capacity to actively exploit the grant of such rights). [156] They can provide a lucrative source of alternative income to royalties. Publishers generally are not in the business of placing such rights. They do not have a proper role in obtaining rights which they are not in a position to place. At the same time, publishers make significant investments in the publication of works and seek also to enjoy returns from the risk involved in their investment. In appropriate cases, publishers may seek to acquire non-publishing rights which they ought to revert if not exploited after a reasonable period of time. The same position may well be appropriate for the grant of foreign publishing rights.

This book suggests strategies of this kind. It provides useful wording for contracts and a valuable check list against which the fairness of a contract can be assessed.

One does not expect to see publishers adopting the form of contracts recommended in this book as their own pro-forma. Rather, this book sets up a negotiating base for the writer as well as writers' representatives, be it lawyers or agents.

It contains a very useful section on problem clauses, explaining provisions in contracts which can often cause concern to writers, such as explanations in relation to book club sales and discounting practices by publishers.

It also includes commentary and pro-forma clauses in relation to digital rights.

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Consistent with the nature of the work, there is a section of significant practical benefit on 'Negotiating With Your Publisher', written by Jose Borghino, the executive director of the Australian Society of Authors. In particular, it encourages writers to engage in negotiation over contracts and reinforces that they should not underestimate the value of their work to publishers. At the same time, Borghino is mindful of the co-operative nature of the publishing venture.

The bottom line is that writers and publishers mutually benefit from fair contracting. Publishers generally seek to develop long term relations with writers. It is not desired to promote in any sense a feeling of dissatisfaction with the contracting process. Often this dissatisfaction arises from mis-understandings, whether by publishers or writers. The business of publishing is extremely perilous for publishers as much as writers — both parties take great risks with their time and resources. For all of the literary triumphs which are promoted in the media, there are considerably more instances of writers and publishers achieving poor returns. It is imperative to impart a sense of parity of risk between publisher and writer, and from that point of view, the endeavour of publishing proceeding on a footing of mutual respect and empathy. The first stepping stone on this path is fairness in contracting. It is in this regard that this book plays its most important role. Along with material published by the Australian Copyright Council, it is the primary source of information to writers and publishers about contracting from a writer's point of view. Publishers need not fear it. Writers need to embrace it.