

A Few Key Contract Negotiating Tips for Newbies

by Linda Rohrbough

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One of the things I hear the most when I do workshops on the business of writing is a fear that borders on paranoia about contracts. This isn't all that hard and with a little information, even new writers can look savvy in this business. Let me say up front, I'm not a lawyer. This is what I use for my own contract negotiation and you use these tips at your own risk.

The first thing most writers don't understand is that everything is negotiable, with a couple of exceptions. The exceptions are the cover and the title. That always surprises new authors. But even my seven figure writing friends say their publishers don't budge much on these two issues. The publisher may run with the title you propose when you sell the book. But nine times out of ten, the publisher is going to change the title once they buy the book. And they usually announce the change rather than asking what you think. In my career, I've only had a single publisher ask me for input on the cover and they only did that once. There's no point in fighting over these things. You'll just lose the cooperation of the editorial staff before you even get started. But there are key points which are negotiable.

What I see a lot of in contract negotiation is two extremes. One is writers so desperate for their work to be published, they're ready to give away the farm. The other is writers so paranoid about the publisher making more money than they do, that they ruin a deal before it starts. There's a balance here and it's important to find it.

Here's a news flash. The publisher is going to make more money off your book than you do. But often, when a new writer sees the percentage they get in a contract, which is usually less than six percent for a first time author, the concept of the publisher making more money often stalls them or sends them off into self-publishing. It's okay if the publisher makes more money than you. You want them to, because they'll come back to you for more books. And if they make money, you make money. As you get established, you can negotiate for more and you can do what you love, which is to concentrate on writing.

My principle in contract negotiation is to maximize potential profits and avoid language in the contract that limits my future in some way. My first tip is read the contract. Just read it. You'd be surprised how many authors don't. They just sign the thing and send it back.

Once you've read it, Google terms you don't understand. You'll get way ahead by simply asking about those terms in a non-adversarial way with your agent or editor. Sometimes in the discussion of the term, the editor will give some just because you asked.

Here are some terms to look for.

Joint accounting. You don't want this and most publishers will take it out without a second glance. What this term means is if you do two books (or more) for the same publisher, the books are grouped together, or counted jointly, for the purpose of determining profits. The consequence to you is the publisher will take the profits from

one book to make up for the losses on the other. You want your books accounted for separately, so if one makes more than your advance, you get royalty checks.

First Rights of Refusal. This means the publisher gets to decide first whether or not to publish your next book. You may or may not get this removed, but you can certainly ask. And you can often get the time period the publisher gives themselves to decide shortened. On my last contract, my agent got a ninety-day time period for refusal shorted to thirty-days. And we worded it so it only applies to books I'm doing in the same genre. So if I've got a project outside that genre, we have the right to shop the book anywhere we want. Both of those issues are a big deal.

Options clause. The publisher often wants to buy the next book for the same arrangement they got this one for. That happened to Agatha Christie. The publisher had the option to buy her next two books for the same money as her first. When her first book took off, she tried to get better money for the next two. The publisher wouldn't budge. So she did what any self-respecting author does. She bit the bullet, wrote the next two, and then renegotiated the deal beginning with number four. Of all the problems in the universe of publishing, this is one of the better ones. But you still want to avoid it if you can.

Buying Rights. The publisher is buying the right to publish your book in certain formats. They'll want all the rights, meaning paperback, hardback, electronic rights, audio book rights, movie or film rights, foreign language rights, and so on. You'll want to hang on to as many of these rights as you can. This is always a balancing act. But the

bigger your name, the more rights you get to hang on to. So with each contract, you can expect to keep more rights.

Royalties. This is the biggie. You may not be able to get a bigger royalty as a new author, but they are often open to creating a royalty scale that slides upward as your book sells more. The sliding scale is based on the theory that the publisher will have recouped their costs in putting the book out, so their profits go up and yours should, too. A typical scale for a fiction work may be three percent initially, then at ten thousand copies it goes to four percent, and at twenty-five thousand copies it jumps to five percent. Thirty thousand copies is considered a best-seller, so sometimes the break point is there. Obviously, you want the number of copies where the royalty goes up to be as small as possible and the royalty to be as big as possible.

I remember getting a contract and seeing a twelve percent royalty. I got all excited until I read more carefully and found out that was for a hardback version, which I knew the publisher had no intention of producing. There is no point in negotiating a royalty for something that won't exist. Reading carefully is the bonus here.

Most writers say, "Won't my agent take care of all this?" You'd think. But in some cases the agent is only a step or two ahead of you. And these days a lot of authors are unagented because it's easier to get a publisher than an agent. If you decide to turn a blind eye to the contract, you're taking a chance. Why do that if you don't have to?

Recap – Six Tips for Contract Negotiation

1. Read the contract.

2. Google terms you don't understand.
3. Look for the term "Joint Accounting" and ask it be removed.
4. Try to keep as many rights to the book as you can without alienating the editor.
5. Watch out for options, like first right of refusal, and try to get that removed or limited.
6. Suggest a sliding (upward) scale for royalties as sales go up.

Biography:

Linda Rohrbough has been writing professionally since 1989, has more than 5,000 articles, seven books and numerous awards for her fiction and non-fiction. Linda's new book Weight Loss Surgery with the Adjustable Gastric Band (Da Capo Lifelong Books, March 2008) is now available. Visit her website for details:

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