

Negotiating Contracts over the Phone

A Primer from the National Writers Union

Written by Ken Wachsberger, with updates by Paul J. MacArthur

The most important part of negotiating a book or journalism contract is convincing yourself that you have the right to negotiate in the first place. Too many writers think they have to accept whatever a publisher offers or they won't get published. That is false. You have the greatest power to negotiate when someone commits to hire you or to use your writing. If a publisher offers you a contract, that means it wants you. You are in a position of power and you can negotiate.

Most publishers, however, count on writers to sign away all rights, no questions asked, in exchange for a correctly spelled byline. Your approach should be just the opposite. Don't ever sign a boilerplate contract. Publishers' contracts are written by their attorneys to benefit themselves, not the authors. In order to get a deal that truly benefits you, you must be willing – and you must have the courage – to negotiate. Consider a boilerplate contract merely the publisher's opening offer.

Indeed, with only a few exceptions, every publisher is willing to negotiate and make concessions. Don't write for those who won't and shoot for the stars with those who will. Dignity before byline – not to mention the additional income and control over your work that you will gain from negotiating.

During negotiations, some publishers may say, "No one has ever asked for that before." Don't be intimidated by this response. In some cases, the publisher isn't telling you the truth. In other cases, you will be breaking new ground for writers. For that, we thank you.

When negotiating a contract over the phone, consider the following steps:

Step 1: Self-hypnotize

Convince yourself that you're worth more than the boilerplate contract or you'll never convince the publisher. Say these two lines to your publisher with conviction (practice speaking into a mirror before calling the publisher):

"I am a professional writer." — This is especially important for academics. You're not just an academic who writes or a writer who teaches. You're an academic and a writer. They are two different, though related, careers. That's why you need to belong to your teachers' union and also the National Writers Union.

"That seems a little low to me." — We can't emphasize enough how much that attitude will get you. Say it slowly; then pause. Wait for the publisher to respond.

Step 2: Know Your Contract

If you join the National Writers Union, you can obtain a copy of National Writers Union Guide to Book Contracts, which includes information about writers' rights, standard industry practices, and unacceptable contract terms. If you're a journalist, refer to the NWU's standard journalism contract. Go through every clause in your contract and find counterparts from the Guide or the standard journalism contract.

Step 3: Get Contract Advice from the NWU

Contact an NWU contract advisor by sending an email to advice@nwu.org. The NWU will set you up with a contract advisor who can provide you with expert advice. Being able to tap into the NWU's contract advising network is one of the most valuable benefits of National Writers Union membership. For some members, contract advice is worth far more than the cost of dues alone.

Step 4: Know Your Bottom Line

When negotiating, you seldom get everything you want. The idea is to improve your contract as much as possible through compromise. Don't be so rigid that you lose a potentially workable contract. On the other hand, not every contract is workable. What are your bottom-line issues, the ones in whose defense you would rather walk than compromise?

Two issues you probably want to fight for in this information and electronic age are copyright and electronic rights. As a professional writer, you want the right to profitably resell your books and articles without penalty.

What else matters to you? Only you know.

Step 5: Start High

As this is a negotiation, your opening offer should be higher than your bottom line. You will never be able to negotiate up, but if you start high, you will have room to move downward to meet your publisher on some issues while still coming out better than if you had accepted the boilerplate contract.

Step 6: Prepare an Opening Script and Good Notes

If you're comfortable on the phone and totally primed for negotiations, maybe an exact script isn't necessary. But remember the value of a good first impression in setting the tone of your conversation. A script is most important in helping you overcome the initial fear of negotiating. Write it down beforehand and practice repeating it until it sounds natural. Only then is it time to make your call to or accept a call from the publisher.

Don't wing it or rely on memory during the negotiations. Write down the points you want to make about every clause, including the first bids, the fallback bids, and the bottom-line positions.

Here's a sample phone dialogue to get the discussion moving in your direction:

Assuming you've already talked previously with the publisher and you're on a first-name basis (Don't ever sign a contract with someone named Sir or Ma'am), start off like this:

"Hey, Les, I'm calling about my contract. I have a few concerns before I can sign it." ["Concerns" is better than "Questions."]

Your surprised publisher replies, "What's wrong with it?"

You say, "I want to publish with you because you're a prestigious organization. But besides prestige and a small advance [if you are so fortunate], what do I get for my hard work?"

Or, "I'm pleased that you want to publish my book, and I know that you have deadlines so I would like to get this back to you as soon as possible but I'm a writer [not an academic who writes!]. I write words to pay my bills. You're starving me here."

Or else simply, "Would you like to go clause by clause?"

When you've said what you want to say, stop talking. Let the other person respond. In negotiations, often the first person to break a long moment of silence loses.

Step 7: Take Notes during Your Negotiations

Note taking empowers you and it prepares you for the inevitable follow-up communications. Record dates of all phone correspondence, keep photocopies of all letters you send, print out all email correspondence, and write down the names of everyone you talk to, including secretaries.

Step 8: Don't Make Commitments during Your First Conversation

Take a day to think about your conversation before making any commitments. Don't feel compelled or pressured to make a snap decision over the phone. Report back to your NWU contract advisor and ask questions. When you demand time to think, you are taking control. You also are allowing yourself to psych up and prepare a script if you need it.

If, during your conversation, you are uncertain about a proposal from the publisher, simply say, "Let me get back to you. I need to speak with my contract advisor."

If the conversation is not going well, tell your publisher you need to call him or her back (use any excuse to get off the phone). Then regroup, connect with your contract advisor, work out your game plan, and restart your negotiations.

Step 9: Ask Questions and Get Answers in Writing

Ask the publisher questions about sections of the contract that you don't understand. Ask for examples of how these sections will apply to you and get the answers in writing. Be sure that any "side agreement" made with the publisher is enforceable. Get it in writing and make it part of the contract. If a publisher won't put a "side agreement" in writing, then assume the publisher won't honor that "side agreement."

Step 10: Be Prepared to Walk

Those writers who have no human dignity and are comfortable being stepped on can ignore this step. But because you've read this far, you demand respect. You've already determined your bottom-line issues in step four. If the publisher can't respect those terms, go elsewhere.

Ken Wachsberger is the founder of the National Writers Union's Academic Writers Caucus, a Book Contract Advisor specializing in academic publishing contracts, and the NWU's former 2nd Vice President for External Organizing. He teaches writing at Eastern Michigan University in Ypsilanti, Michigan, and is the founder of Azenphony Press (www.azenphonypress.com). He may be reached at (734) 635-0577 or ken@azenphonypress.com.

Paul J. MacArthur is the NWU's Assistant National Contract Advisor, the 2nd Vice President for External Organizing, and a former co-chair of the NWU's Journalism Division. He is Chair of the Public Relations and Journalism Department at Utica College and a freelance writer. He may be reached at pmacarthur@nwu.org.

The National Writers Union was formed in 1981 to represent freelance writers in all genres, including fiction, poetry, academic writing, technical writing, screen writing, opinion, and journalism. The NWU was chartered in 1983, affiliated with the UAW in 1992, and has chapters all over the country. The NWU offers free [contract advice](#) and [grievance assistance](#) to its members. NWU Grievance Officers have won members almost \$1.5 million in grievance awards. To contact the National Writers Union, call (212) 254-0279, send an email to nwu@nwu.org, or send regular mail to 256 West 38th Street, Suite 703, New York, NY 10018.

Copyright © 2010 by Ken Wachsberger. All rights reserved.

Please contact Paul J. MacArthur at pmacarthur@nwu.org for permission to reuse.

Last Modified: June 1, 2010