

E-Book Contract Amendments

An Overview from the National Writers Union

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Writers across the country are receiving letters from publishers asking them to sign e-book amendments to their book contracts.

If you receive such a letter from any publisher, please contact the National Writers Union's [Grievance and Contract Division](#) right away. The GCD will set you up with an [NWU](#) contract advisor who can examine your contract and provide you with expert advice. Contract advice is a free benefit available to NWU members. You can contact the GCD via email at advice@nwu.org. If you are not an NWU member, [join today](#).

When reviewing an e-book amendment, there are several things you should consider:

What Are Your Original Contract Terms?

You may already have a better deal for e-rights than what is being offered in the publisher's amendment. If so, don't even think about signing that amendment. This is something you should discuss with your contract advisor.

Does the Publisher Already Have My E-Book Rights?

Probably not. Some publishers are sending out amendments for contracts that were signed decades ago, before e-books ever existed. That hasn't stopped them from trying to claim they own the e-book rights. In many cases, the author never signed over e-book rights. Contrary to what some publishers claim, e-books are not an extension of print rights. The “e” in e-book stands for electronic. Therefore, it is extremely important that you review the original contract with your contract advisor to determine exactly what rights you retained. You may be able to leave an e-book amendment offer on the table and seek out a better deal with another publisher.

Royalty Rates

Reissuing an existing work as an e-book is not an expensive proposition for publishers. E-books can be sold without the cost of printing and binding, shipping, returns, and warehousing. For these reasons, the NWU has long argued that publishers should pay higher royalty rates on e-books than they do on print copies. In the case of electronic reissues of existing works, the NWU believes that an appropriate royalty rate would be something along the lines of 35 percent of an e-book's list price. Especially when dealing with a trade publisher, try to avoid royalties based on net proceeds, which are much more difficult to monitor. If a publisher refuses to pay royalties based on list price, the NWU believes that something along the lines of 50-70 percent of net represents an appropriate royalty rate. You can discuss royalty rates with an NWU contract advisor.

You Don't Have to Sign the Amendment

You are not required to agree to an amendment to an existing contract. If you don't agree to a proposed amendment, the original contract remains in force. This is especially important if the terms for a publisher's e-book stipulated in your contract are better than what is being offered in the publisher's amendment.

Get the Terms You Want

Please don't sign any amendment unless you get the terms you want. You are under no obligation to give any publisher your e-book rights. Take your time and negotiate the best deal you can. Depending on the terms of your contract, you may be able to license your e-book rights to another publisher that gives you better terms or self-publish your own e-book. This is something you should review with your contract advisor.

Exclusivity of E-Book Right

Many publishers are trying to claim exclusive e-book rights. But signing over an exclusive e-book right may not be in your best interest. You may want to consider only signing over nonexclusive e-book rights or granting the publisher a limited, maybe two-year license. This would allow you to seek out better e-book deals in the future. Your contract advisor can help you with the language.

Duration of the E-book Right

Not surprisingly, many e-book amendments apply to the life of the contract. If the royalty rate you are able to negotiate is on the low end and you still want to sign the amendment, consider requesting that your royalty rate be renegotiated in two years. Again, your contract advisor can help you with the language.

Does This Contract Amendment Impact My Electronic Subsidiary Rights?

Probably not, but you should read the language carefully. Most electronic rights have traditionally been treated as a subsidiary right at a licensing rate of 50 to 75 percent of publisher receipts. Make sure this e-book amendment does not impact your existing subsidiary rights split. No reputable publisher should ever offer you less than a 50 percent split for any subsidiary right. You should seek more than that whenever possible. A more thorough explanation of subsidiary rights can be found in the NWU's *Guide to Book Contracts*, which is available in the members-only portion of our website.

Will This Impact My Rights Reversion and Out-of-Print Clauses?

When you sign an e-book amendment, you should also look at how this impacts your rights reversion clauses. Some publishers may try to claim that your book is still in print — even if it is not selling and is not being promoted by the publisher — because an e-book version is always available. Again, this is something you should discuss with your contract advisor. We also recommend that you review the out-of-print right reversion section of the NWU's *Guide to Book Contracts*, which is available in the members-only portion of our website.

What If the Publisher Goes Nuclear?

A publisher may try to get you to agree to a contract amendment by threatening to let your book go out of print and/or not to publish future books. Don't be intimidated. You might actually be

better off if the publisher takes your book out-of-print so you can self-publish or license a new edition with another publisher on more favorable terms. Since there are a number of complex issues involved in such a decision, you should think very carefully about whether or not this is a viable option for you, and be sure to discuss it with your contract advisor.

How Do I Negotiate?

If you're going to talk to your publisher on the phone about e-book rights or any other contract issue, be sure to check out the NWU's [Negotiating Contracts Over the Phone](#) primer (in the "Tools and Resources For All" section of the NWU website) beforehand.

E-books present tremendous opportunities for writers, but only if they are fairly compensated for their work.

The National Writers Union (UAW 1981) was formed in 1981 to represent freelance writers in all genres, including fiction, poetry, academic writing, technical writing, screen writing, and journalism. 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.

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