

## LETTER FROM A MEMBER TO AN EDITOR

Hi [editor], sorry it has taken a few days for me to get back to you on this. I have been doing research on contracts and such. . . . I have gone over our contract carefully with the NWU and discussed with them both this contract and the one I'm being offered by [xxx].

I'm trying to be as conscientious as possible about weighing my wage-earning responsibilities toward my family with my personal leanings. However, truthfully, in my mind I have made my decision and feel confident the rest of this is just hammering out the details. I'm really excited about working on this book with you, especially after the past eight months of talking and planning with the guys at [xxx], searching for just the right publishing situation for what we have in mind. So I want to start by saying that you are absolutely my personal choice of editor to work with - meaning you personally, along with [publisher] - on this project. I have really enjoyed getting to know you, and authors who have worked with you all speak very highly of you. Further, I understand your role in representing [publisher] and I think you manage to balance that very well with a desire to keep your authors happy, which as an author I find extremely valuable. For most of the below, I have really just kept in mind what would happen if, say, you were promoted to senior management, left to start your own company, or won the lottery and retired, leaving me with an unknown editor. I hope you take the following points in that spirit. There are several things we need to work on in terms of both language and royalties. I'm presenting these in order under General, Manuscript, Publication, and Financial Issues, so that we can blow through the simpler ones first. I have listed what I would like for each item, along with alternatives and notes where I am able to be more flexible.

Like I said, you're my choice. I absolutely have faith that you and I can shape this contract to be the very best deal for both of us.

### GENERAL ISSUES

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#### 1 The [editor] Clause

What I would like: language like this:

If at any time during the writing, editing or production of the Work the acquiring editor [editor] becomes dissociated from the Work for any reason, Author may terminate the contract upon repayment to Publisher of any advance monies received.

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## 2 Copyright & Ownership

What I would like: copyright to be assigned to me.

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## 3 Interpretation

What I would like: to be able to go to court in California should the need arise, with this language:

Notwithstanding any language herein, it is agreed that Author, in case of any claim for non-payment by the publisher or literary agent or any other party to this contract, may bring an action in any court of general jurisdiction in the state in which Author resides to recover the amounts due, costs, disbursements, and reasonable attorney fees.

## MANUSCRIPT ISSUES

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## 4 Acceptability

Based on your reputation, I have no anticipation of issues with acceptability. However, if you DO win the lottery, I will need some assurance that your successor is on board.

What I would like: A detailed description of what is considered acceptable, a requirement for [publisher] to describe what is unacceptable along with offers to enable me to remedy the situation, and a return of my rights in the case that a remedy can not be found. I also need to know that the portions of the advance that have been disbursed are NOT returnable if I deliver but [publisher] decides not to print the book (have heard some horror stories). The current language does not make that clear. Like this:

The Publisher will convey to the Author its comments, in writing, concerning the acceptability of the manuscript within 60 days of its delivery, unless the Author agrees to an extension of this deadline. If the Publisher considers the manuscript in whole or part unfit for publication, the Publisher will provide a detailed description of the perceived deficiencies and will indicate what revisions are necessary to make the manuscript acceptable. The Publisher and Author shall agree on a mutually acceptable deadline for the delivery of a revised manuscript.

In the event this contract is canceled by the Publisher because the manuscript is deemed unacceptable, per the standards set forth in this agreement, all rights

shall revert automatically to the Author upon receipt of notice.

If the contract is terminated by publisher, Author shall retain 80 percent of the total advance and receive any part of that not yet paid. If Author has received more than 80 percent of the total advance, Author shall repay without interest any portion in excess, but only from those proceeds received by Author under a subsequent contract for publication of the Work.

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## 5 Assignments

At the moment, this contract indicates that [publisher] could at any point yank me off the project and put someone else on. That makes me and the guys at TI \*quite\* uncomfortable. What I would like is language like this:

This Agreement shall be binding on the parties and their respective assigns, heirs, executors, or administrators. No assignment shall be binding upon either of the parties without the prior written consent of the other, such consent not to be unreasonably withheld. The Author may, however, assign any sums due him or her without such consent from the Publisher. The Author's obligation to write the book and the Publisher's obligation to distribute the initial print run of the Work are agreements for special services and are not assignable.

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## 6 Author Warranty

Obviously, we're both professionals, and we'll do our sincere best to hew to the letter of the law in producing this manuscript for publication. We know that.

What I would like: "to the best of the author's knowledge" added to the statement about libel. Or language like this:

The Author will cooperate with lawyers retained by the Publisher to be sure that no part of the Work is libelous, obscene, an invasion of privacy, or a violation of any copyright or trademark. Once the manuscript has passed legal review by the Publisher's attorneys, the Author shall not be responsible for any legal expenses relating to lawsuits brought in connection with the Work but will cooperate in defending against such suits.

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## 7 Proofreading

As per paragraph 7, it is fair for me to pay for corrections for my own mistakes but not for mistakes introduced by the publisher or publisher's subcontractors. What I would like: language that clearly indicates that I would pay for AUTHOR errors only.

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## 8 Revisions

What I would like: control over how often and how substantial revisions will be. language like: The Author will not have to revise the Work more often than every two years. If more than one-fourth of the text must be revised, said revisions shall constitute a new work subject to a new agreement. . . . For the purposes of determining the applicable royalty rate, sales from revised editions shall be regarded as cumulative. and If Author cannot or will not revise the Work, Publisher may arrange revision by another competent individual, whose selection is subject to Author's approval. Author also must be able review the revisions. In no event shall Author's royalties for the second edition be less than 75 percent of the amount due for the previous edition, 50 percent for the third edition, and 25 percent for all subsequent editions in which Author's work appears.

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## 9 Related Works

In addition to "scholarly journals" (which kind of lets me know that this was originally an academic book contract) I'd like to include trade journals, online and in-print magazines and news organizations, and other similar portals and periodicals that publish related material. I intend to write articles in order to \*promote\* the book, not to compete with it.

What I would like: language allowing me to create promotional materials, articles, web sites and web pages, presentations, and the like. Also, please add the qualifier "in genre."

## PUBLICATION ISSUES

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10 The All Possible Speed Clause. With tech issues, time is of the essence. Therefore, what I would like is language like this:

Publisher agrees to publish the Work within 6 months of acceptance of the Work and agrees to notify Author of the publication date. Should Publisher fail to publish the work by this time, the Author may notify Publisher of an intention to terminate this agreement. If within 60 days the Author and Publisher cannot agree on a revised publication schedule or the Publisher fails to respond to the Author, the Author may terminate this agreement by sending written notice to Publisher. Upon receipt of such notice by the Publisher, all rights shall revert entirely to the Author, and the Author shall be free and clear to sell the Work elsewhere. The Author shall also be entitled to keep any advance monies already paid.

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### 11 In-Print Status

NWU recommends setting some standards that define when the book should be considered out of print so that ownership can revert to me at some point. I don't mind if the book stays in print in perpetuity as long as it is useful to someone - if sales cease for a period of time, though, I would like the rights to revert to me so that I can open-source the book and donate it to the BeagleBoard organization.

What I would like: A set of conditions by which the book is considered to be out of print, rather than just [publisher]'s declaration of such. Language like this: The Work shall be deemed out of print if there has been no royalty over \$25 or fewer than 50 copies have been sold in two successive royalty periods, whereupon all rights granted herein automatically revert to Author.

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### 12 Author Copies

What I would like: the best distributor discount for myself for copies of the book.

## FINANCIAL ISSUES

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### 13 Advance

I know it is tough to create an advance for a project like this, in an economic

climate like the current one, and I appreciate that you've worked with me to pay a percentage of the advance at certain milestones. Unfortunately, \$5k gives me only about half the amount I would need to supplement my income over the several months I need to write the book.

What I would like: either a larger advance or backloaded royalties, as discussed below:

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#### 14 Print Royalties

I know you went to bat for me with respect to matching the base royalty offer I had received from xxx, for which I am really grateful. However, it is a sticking point that xxx's scale continues up to 20% for high-volume books. I heard you say that 15% was the maximum you could attain without going further up the chain, and I respect that - but just doing the math on 15k copies vs. 10k makes it difficult to justify going with [publisher] from a purely financial perspective, as I can get that royalty schedule from xxx with no further negotiation at all. What I would like: a match on the print/base royalty schedule from xxx:

Ten (10) percent of Our net on the first 4,000 copies of the Work sold;

Twelve and one half (12.5) percent of Our net on copies sold between 4,001 and 8,000;

Fifteen (15) percent of Our net on copies sold between 8,001 and 12,000;

Seventeen and one half (17.5) percent of Our net on copies sold between 12,001 and 25,000;

Twenty (20) percent of Our net on all copies sold thereafter.

Alternatives: to be determined\_\_\_\_\_

#### 15 E-book Royalties

I'm sure you have been through the standard discussion a hundred times of how it costs the publisher nothing to maintain an e-book, so I'll cut to the chase: xxx's e-book royalty is actually a multiple of the base rate (1.5x) rather than a straight percentage. That means that if the book sells well, the e-book royalty could go as high as 30%, and that rate would include non-discounted Safari. . . .

NWU is recommending 50% based on the lack of storage, shipping, or any other maintenance required for e-books other than posting a file.

What I would like: 50% royalty on e-books

Alternative if that is impossible: 2x the base print royalty on e-books

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## 16 Subsidiary Rights & Royalties

The subsidiary rights on this contract... well, while they may be standard, they are really, really low. I have presented this one section by section, as the values in each one have different bases.

What I would like:

Overall, addition of this clause:

All subsidiary/secondary rights negotiations carried out by the publisher for the Work shall be conducted at arm's length. In all such negotiations, the publisher will endeavor to obtain, at a minimum, the fair market value for the Work.

a. Export sales - Full base print royalty rate. I would also like to include language stating that e-book sales are never considered export sales. (If it costs [publisher] more to sell an e-book overseas than in the US, please let me know how that works.)

Note: if this is not possible for all countries, let's discuss it for specific countries. My list includes Canada, Brazil, Japan, Germany, UK, and India.

b. Translations - NWU has recommended asking for 75%. I would also like to ask about extending a flat rate if the translating company is owned by [publisher]

c. Custom works - 50% (Note: willing to bend, given the unlikelihood of custom works)

d. Print derivatives - 50% (Note: willing to bend, given the unlikelihood of print derivatives)

e. Other media - I would like to retain the rights for alternative media, including audio and video.

f. Electronic reproductions - see "e-book royalties" above

g. Direct sales - Full base print royalty rate.

Note: since there is no discount involved with direct sales, I'm willing to roll with 10% of net, as that is essentially the same as 10% of list price.

h. School versions - Full base print royalty rate

Note: an alternative is to reduce the base rate according to this language:

For copies sold in quantities of 1,000 or more at a discount of more than 50 percent, the Author's royalty rate will be reduced by 0.5 percentage point for each 1 percentage point of discount above 50 percent. In no event, however, will the Author's royalty be reduced by more than 5 percentage points.

i. Book club - feel free to reduce this to 15% :)

j. Other subrights - 50%

k. Proration of packages - this one seems fair to me as long as it is based on the base print royalty rate above

l. Proration of custom works - same as k.

m. Other - I am not comfortable with [publisher]'s lack of definition of "good faith." I would like to replace this section with this language:

Any rights not expressly granted to the Publisher under this agreement are fully reserved by the Author.

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## 17 Other Rights

What I would like is language like this:

Return of Subsidiary Rights. If We don't license or ourselves use any subsidiary right You've granted Us within two years after We first publish the Work, We'll revert the unused right or rights to You if You notify Us that You want Us to do so.

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## 18 Accounting

This is just regular bookkeeping stuff, as recommended by the NWU. What I would like is language like this:

The Author or his/her duly authorized representative shall have the right, upon reasonable written notice, to examine the books and records of the Publisher insofar as they relate to the Work, provided such examination is conducted during normal business hours. Such examination shall be at the Author's expense, unless errors of accounting amounting to more than 5 percent of the total sum paid to the Author in any royalty statement are found to the Author's disadvantage, in which case the cost of such examination shall be borne by the

Publisher. What would be really cool:

Author shall have the right to consult Nielsen BookScan, under Publisher's subscription, to check sales records of the Work.