

The special relationship

James Mayhew questions whether ‘special sales’ are good or bad

Last year I wrote a blog about high-discount bookselling, or ‘special sales’ as publishers call the practice, for the SoA. It clearly put the creatives’ cat amongst the publishing pigeons, as the comments from authors and booksellers mounted up on the website. There were some strongly worded, passionate views. The story was taken up in *The Bookseller*. This is an industry-wide issue, after all, affecting almost all publishers and many, many authors.

It was author and Children’s Writers & Illustrators Group chair Nicola Morgan who coined the phrase ‘Fair Reading’, echoing the principle of Fair Trade. As she says, ‘If a publisher pays an advance that is patently too low to live on and then quickly puts the book out there at vast discount so that the book doesn’t stand a chance of earning out that advance, how do they expect the author to live? That is not a rhetorical question. It’s a question publishers need to answer.’

While the average author’s income hovers around £12,000 a year, publishers’ profits continue to rise. And special sales account for an increasingly large part of the publishing market. So, when it comes to bookselling, what is fair?

When a publishing offer is made, the advance and royalties on published price are usually clear. But the unfairness creeps in when books dip below a certain

level of discount. As Nicola Solomon, SoA chief executive explained to *The Bookseller*, this is when the ‘sneaky little sub-clause’ comes into effect. ‘High-discount clauses can skew the whole contract, so the amount the author gets is not what they think that they were bargaining for at the beginning.’

In my original post, I explained that this whole argument grew from a proposal for 10,000 sets of ten books, 100,000 of my books in total, to be placed in a well-known discount catalogue. This was not unsold or remaindered stock; of course it makes sense to reduce (rather than pulp) books that don’t sell. This was about successful books, reprinted in huge quantities, to order.

The books (RRP £6.99) were to be offered by the publisher to the bargain seller at a very highly discounted rate, to be sold to the public for £1 each. As per the terms of my contract for high-discount sales, the usual royalty would no longer apply and a percentage of net receipts comes into force instead. I would receive around 3p per book.

Meanwhile the market would be flooded with the cheaper versions, making it next to impossible to sell the books at anything like a more reasonable price, or for the ‘normal’ royalty ever to be achieved. Fortunately, some of the titles in this series had been contracted through an agent, and those particular agreements had a clause

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Special sales explained

When an author's main royalty is based on the retail price, a separate, lower royalty is usually specified in the contract for sales (from publisher to retailer) at a discount of, say, 52% or more. When the author's main royalty is based on net receipts (the amount received by the publisher from the bookseller), then the amount the author receives per copy automatically shrinks along with the price the bookseller pays to the publisher. Either way, 'high-discount' sales result in proportionately lower royalties to authors.

The sort of sales described by James Mayhew tend to come under those further clauses that lurk in the dense undergrowth of 'minor' royalty provisions. They could manifest themselves in a number of ways - most of which even to the trained eye can be as clear as mud. There could be mention of 'book club and similar', 'co-edition', 'special', 'premium', 'mail order', 'own brand', 'sales at discounts of 80% or more', 'supermarket', and/or 'non-traditional retail outlets' (for some works, e.g. craft, cookery, art books, outlets like museum shops, cafes, high-street retail chains etc are becoming increasingly significant).

The other day we saw the following contract wording: 'On copies sold as cheaper editions premium offers or other special sales a royalty calculated on the price received of ...%; if the work is sold as a special sale as part of an exploding pack, a royalty calculated on the price received of: ...%'. No: we neither.

It is always reasonable and indeed, if in doubt, strongly advisable, to ask the publishers to clarify which royalty provisions are likely to apply to any significant quantity of sales in the work's first year.

With many special sales, the deal is not quite as one-sided as it first seems. The purchaser pays a very low price per copy for a large quantity of copies, but it pays up-front and 'firm'

for all those copies. Knowing at the outset that such payment is guaranteed, and factoring in economies of scale, can affect the publisher's budgeting decisions for the work as a whole, particularly with highly illustrated works which remain disproportionately expensive to produce.

As James Mayhew says, context is all. If you have a long and now slightly dusty backlist, offering a special deal on backlist titles in the wake of publication of a new title can be a great boost; and the same can be true for any title once the main retail market has clearly become exhausted. And in some instances, there may be little doubt that a particular special deal is clearly targeting an audience which would otherwise never become aware of your books. But it is surely naive to argue that, these days, any copies that exist won't compete with conventional titles. Once you're on their lists, you will be bombarded by Book People catalogues whoever you are; and there are always dealers keen to buy up desirable stock and resell it on Amazon Marketplace.

We do not believe that publishers make any significant amount of money out of such high-discount deals either, and they suffer as much as the author if those deals cannibalise conventional sales. If having such a deal 'in the bag' from the outset is a deal-breaker for the book to be affordable at all, the publisher can explain as much and the author can make an informed choice. In any other event, we would expect the concerns of author and publisher to be as one on when such deals are in a work's best interest and when they are counter-productive. We cannot see why any publisher would begrudge allowing the author a right of approval over any ultra-high discount deal, at least in the work's first year.

which gave me the right to refuse. I took advantage of that right; I said, 'No'.

Hilary Murray Hill, CEO of Hachette, told *The Bookseller* that they, as publishers, respect any author's wish not to be involved in these promotions. Hachette confirmed to the SoA that they always consult their authors; 'if authors don't want a special sale', they say, 'then we don't do it'. That attitude amounts to best practice, but not all publishers follow it. The problems arise where there is no veto clause, allowing a less meticulous publisher to proceed without asking the author, and so presenting any deals as *faits accomplis*.

I arranged a meeting with Hachette to try to understand why they made such special sales. They made it clear that there is no flexibility with these book-selling giants; if you say 'no', the bargain bookseller goes to another publisher, another author. Hachette felt that these sales were sometimes the only way to keep certain titles in print. It seems to me, however, that it is very often the more successful, popular, established books

that are targeted by these discount sellers - in the end, the bargain booksellers want books they can easily sell.

Across the board, publishers seem to believe these deals are great exposure. Author Cathy Cassidy, in *The Bookseller* article, disagreed: 'We live in a society where the creative arts are shockingly undervalued. Books sold for pennies... musicians and artists expected to work for free because it will be "good for exposure" - well sorry, that's just not true.' Most often, it is the authors themselves who do the promoting. Speaking at festivals, blogging, social media, free visits to bookshops, libraries... always thinking of the 'bigger picture'. Is this the reward - seeing big impersonal booksellers prosper as a result of our 'exposure'?

Writer and artist Jackie Morris felt that 'the relationship of author and publisher has always been one of trust, and that they would have my best interests at heart. Recently I have learned that this is a mistake.' adding, 'When it comes to high discounting, the publisher and the bookclub are the beneficiaries.'

In *The Bookseller*, Sarah Walden, of ‘outlet clearance’ bookseller the Book People, was steadfast: ‘By creating lots of new readers for authors and publishers, we believe that we are performing a valuable service to the industry – and the basis for our existence isn’t going to change.’

Meanwhile, independent bookshops struggle to compete with discount catalogues. Some are even said to buy the bargain books, and sell them on at full price. *The Author* reported on this practice as long ago as Spring 2003. Publishers insist that they forbid it, and that their improved ability to track sales now helps stop such abuses, but some special-sales titles undoubtedly end up on Amazon ‘New and Used’, where they compete directly with mainstream titles.

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Paul Wallace of David’s Bookshop in Letchworth Garden City took up the question of pricing on the SoA blog: ‘I suspect most indies would agree with me that it would be far better they didn’t feel obliged to participate in this particular race to the bottom. Deals such as this encourage expectation of unsustainably low prices. A fair deal for everyone – author, publisher, bookseller and reader is called for.’ Tamsin Rosewell, independent bookseller at Kenilworth Books, described her ‘overwhelming relief’ that ‘someone had said publicly what we have all been discussing quietly behind the industry’s back for far too long...’

Publishers insist that they simply wouldn’t do deals that would damage higher-price sales, but perhaps they have been unable to keep up with the success of discount sellers. They have been forced to make a deal with the devil, you might say. In the past, discount sales were smaller; they could indeed be seen as promotional, because they didn’t have a significant impact on traditional bookselling. But now, special sales have exploded into supermarkets and even special print-runs for discount stores, like T K Maxx. And companies such as the Book People now have a large online and direct-mail presence, potentially interfering with less highly discounted book sales.

Lizzy Kremer, agent at David Higham Associates, was quoted in *The Bookseller*, saying, ‘The argument is essentially one of discovery... if you have people going into discount shops and finding authors for the first time, that’s going to be good for the growth of the brand.’ But there are downsides. According to Kevin Lane Keller (author of the classic book on branding, *Strategic Brand Management*), ‘there are disadvantages to sales promotions, such as decreased brand loyalty and increased brand switching, as well as decreased quality perceptions and increased price sensitivity.’ So, when a book is sold at a budget outlet, it may be perceived as unsuccessful – and the only person who loses out,

in terms of branding, is the author. The reputations of publisher and bookseller aren’t at stake.

Kremer conceded that too many special sales would affect traditional sales, adding, ‘There is also the underlying principle: should these deals really exist if the author’s recompense is going to be so low?’

‘I don’t think book contracts have changed as fast as the numerous ways stories and books have become available,’ said writer and illustrator Ken Wilson-Max on the SoA blog comments thread. ‘Maybe it’s time for creators to re-read old contracts and suggest changes... before publishers try things that benefit them more?’

The SoA’s timely CREATOR campaign is already pushing for ‘a review of laws applicable to creator contracts and the introduction of legislation to address unfair contract terms.’ This is backed up by a recent EU directive, which was welcomed by SoA President, Phillip Pullman, who said, ‘Authors badly need the sort of natural justice that these clauses embody.’

A subsequent EC investigation confirmed the often poor terms of authors’ contracts. As Solomon said: ‘authors are disadvantaged by an unfair playing field.’ She added, ‘simple legal remedies such as controlling the term and scope of contracts can have a positive effect on authors’ earnings, which remain woefully low.’ Updates on these campaigns can be found on the SoA website.

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Lastly, there is the altruistic argument, about getting books into the hands of underprivileged children. Hilary Murray Hill, in *The Bookseller*, said non-traditional retailers can reach readers who ‘might not have the opportunity, inclination or budget to buy books’. For charities like Book Start, or for deals created specifically for school libraries, there may well be a good argument for special sales. But for the people who can afford £3 on a daily latte, should books be just £1? Jackie Morris pointed out that ‘The way to provide people on limited incomes with access to books is through free access to public libraries.’

Clearly, then, it is vital that all authors know what’s in their contracts. We must ensure we have the right to veto high-discount deals. Whether we act on it or not is entirely up to each individual author. Just like giving free talks for book festivals, the choice is ours. But there should be that choice.

In the end, this is about far more than a personal return on sales. I can’t put it any more eloquently than Jackie Morris: ‘High discounting undermines the value of literature, the hard work of independent booksellers who build the careers of authors, the income of the authors, illustrators and also, at the end of the day it rubs away at our sense of value and self-worth, it undermines our creativity, it devalues us.’ ●