

GUIDANCE

What sort of deal are you being offered?



Publishing contracts are lengthy, detailed, legally binding documents. This advice gives only a very general overview. It must not be taken as remotely definitive, and authors are urged to take professional advice on a case by case basis e.g. from an agent, a lawyer with knowledge of the book industry, or from the Society of Authors which has a dedicated team of staff with considerable experience of vetting publishing proposals.

For more, see societyofauthors.org.

A: Why do you want a publisher?

It is worth identifying just what is it that you are hoping to receive from a publisher, whether what you are being offered meets those expectations, and how much are you prepared to give to the publisher in return.

Be realistic: there are literally millions of books in print and/or available second-hand from the main online retailers. It means that most books struggle to have an impact on readers; bookshops and book reviewers have very limited space and their responsibility is to readers, not authors.

But what makes a book a bestseller is very often serendipity. So do not give away more rights than you must, for any longer than you must, until you are sufficiently sought-after that you can command a high-grade offer.

B: Why does a publisher want you?

It wants to make money.

A publisher will want exclusive control of, and a share of the income from, as many rights as possible, for as long as possible. It will not want to spend more than it must, and will factor in its expectation of sales: if the up-front costs of advance, editing, printing and binding, etc. can be offset against a print-run of 50,000 copies (and if those copies all sell), the unit cost per copy is very considerably less than if the work only sells 500 copies.

C: Broadly speaking, there are four sorts of deal:

Option 1: self-publishing

Members tell us that the main pros of self-publishing are:

- Flexibility and control: for example you can set the recommended retail price, design your own cover, produce a revised edition or alter the retail price, at will;
- You keep all the income after the platform or distributor has taken its share;
- A publisher handles hundreds of titles but you will be handling very few, all written by you, so you know them better and care more about them;
- For specialist non-fiction and niche subjects you may have a better knowledge of how to reach your potential readers than most publishers;

The main cons of self-publishing are:

- Mistaking the fact that it is relatively easy to publish with the difficulty (for anyone) to attract readers and secure sales;
- As a self-publisher you are responsible for everything. You can outsource services such as editing, in return for a fee, but the more you outsource, the more you have to spend. You need to inform HRMC, keep proper accounts, and know what laws apply to you.

Weighing up self-publishing against signing up with a good publisher is not a straightforward equation. You may not be writing books in order to make a living (though that would be nice), but publishers and agents, of course, are. For a proper comparison, you'd also need to factor in the time you spend on DIY rather than writing your next book.

A publisher will want to be confident of selling some thousands of copies before it is willing to manufacture a print-run (so it can take advantage of economies of scale). Your sales expectations may be much lower and because your share of the income per sale will be higher if you self-publish, you may earn as much from selling a few hundred self-published copies as a thousand copies sold via a publisher.

For more information on self-publishing as an ebook, as print-on-demand (POD) or in a traditional print-run of bound copies, see our Guides to Self-Publishing and to Publicity and Marketing (free to members, for a modest charge to non-members).

Option 2: traditional publishing

A recognised publisher pays you an advance and royalties (best) and/or otherwise makes an identifiable and significant up-front investment in the work for instance by paying you a fee, meeting the cost of ensuring high quality reproduction of substantial full-colour illustrations, guaranteeing to produce the work to a good standard and in an initial print-run of, say, 5,000 copies. The more a publisher has spent on a work initially, the greater its incentive to recoup that investment.

Most authors would prefer to spend their time just being writers. There is commercial value in the 'badge' of being published by a highly-regarded imprint. Good publishers have editing, design and production skills, they have active, experienced rights departments with established connections in other markets.

They handle financial matters such as sales, returns, bad debt, tax implications when dealing with foreign publishers. They put up the money. Benefitting all authors and publishers, the big publishing houses are some of the most rigorous pursuers of book pirates.

Good publishers, doing their best for a book, should be properly appreciated.

Key points to watch for:

That the publisher takes only those rights it is in a good position to exploit (in most cases, especially if you don't have an agent, the publishers will want to control US, translation and audio rights for instance; but generally you should hold back film and TV dramatisations); and - negative though it may feel at the contract-negotiating stage - you should have the right to reclaim specific rights if a publisher fails to exploit them.

We feel strongly that you should be entitled to terminate the contract if, after an agreed limited period, the work becomes available only as print-on-demand/ebook, i.e. when the publisher is no longer making any investment in the work and sales are desultory, but it is holding on to control and its share of what modest income there is.

Option 3: minimal investment publishing

At first glance, this is much like option 1, but actually very different. There is little if any sign of expenditure by the publisher, you are offered no advance, and there is no undertaking or intention to publish other than as an ebook and/or as POD or in an ultra-short print-run (though that is often not clear unless you specifically ask). Start-up and overhead costs are minimal, so almost anyone can set up as such a publisher, regardless of their financial stability, publishing credentials or business acumen.

In return for minimal investment, the publisher gains control over as wide a range of your rights as it can secure, for as long as possible – and the right to keep a significant percentage of the income generated should any of those rights (through no effort of the publisher) become valuable.

Getting published, one way or another, is now relatively easy – infinitely harder is getting just one book out of the millions in print to stand out from the crowd. POD copies are, by definition, produced only in response to firm orders... but bookshops almost invariably only stock titles which are on sale-or-return. Ebooks may be available from online retailers, but have no high-street ‘presence’. Bookshops anyway have limited space and their duty is to readers – so they are likely to favour books by recognised names and recognised publishers. It is unlikely that a POD/ebook work will appear in bookshops or be reviewed in the press.

Key points to watch for:

Identify what exactly the publisher is undertaking to do that you cannot just as easily do yourself by self-publishing and beware vague or misleading undertakings which actually commit the publisher to nothing. Unless there is very strong reason otherwise, you should grant the publisher no more than print and verbatim ebook rights in the English language, and only where the publisher publishes in such form itself (not giving the publisher the right to sub-license other companies to do so).

Be confident that the division of income is reasonable given that the publisher is incurring few costs (it is not paying an advance, or the cost of manufacturing, warehousing and distributing printed books, it will not be absorbing the commercial risk of those books never being sold). You should have the right, from the outset, to terminate at any time on three months’ notice. Failing that, at most the licence period you grant should be no more than, say, three years. And think carefully about whether/in exactly what ways, what you are being offered is a better option than self-publishing – even if the offer comes from a ‘real’ publisher.

Option 4: author pays

You might be asked to pay for services, e.g. editing or publicity. Be sure that the person supplying those services has high credentials and is offering you something worthwhile. The Society for Editors and Proofreaders has a searchable directory of members, as does the

Society of Indexers. The benefit of paid-for publicity and marketing services rarely comes near covering what you spend.

If in return for your money, you are granting a licence, or are entitled to royalties, you are not paying for a service, you are handing over rights to a subsidy publisher. Do not assume either that it is a way of making money or that it is a way to ensure that large numbers of people read your book.

Some firms send writers excessively flattering reports (run off to a formula) on their typescripts, but it's your money they want, not your book. The top publishers pick and choose what to publish, as a general rule if a publisher is advertising for authors, it is probable that it is rather less interested in the merit of your work than in taking money from you.

If you pay a printer to produce copies of the book (self-publishing), you own those copies. When you pay a subsidy publisher, you are not acquiring the books. The contract will probably entitle you to, say, 10 free copies of your work and the chance to buy more in return for (further) payment.

Increasingly, subsidy publishers only produce works as POD or ebook (it's the cheapest option for them) so treat with scepticism arguments about the cost of warehousing and storage. In any case, their production costs - unlike those of a conventional publisher - have already been met (by you), so there is inevitably little incentive for the publisher to spend money or effort trying to sell the work.

Check on the financial credentials of the publisher. You might want to see examples of other books it has produced, and a copy of its latest catalogue. Your rights may well be tied up for a number of years. Reviewers and booksellers know the names of subsidy firms and also know that (even if this does not apply to your book) many works that were not good enough to find a conventional publisher end up on subsidy lists. Occasionally a book produced by one of the better-respected subsidy firms might be reviewed or stocked in a bookshop, but it is extremely rare.

Watch the fine-print; for example, an undertaking to print 'up to 1,000 copies' guarantees nothing; if there is a promise to promote or sell your work from the publisher's website, remember that probably the only visitors to that site will be other fee-paying authors.

Go on pressing for clear commitments and answers to your queries and do not commit to paying any money until you are confident you know exactly what you are getting and how much it will cost you. And consider it money spent - there is no certainty of any sales or royalty income, and subsidy contracts rarely allow for a refund of any of your fee, whatever the circumstances.

Very many authors who sign such deals report spending a great deal of money and getting little but disappointment in return.

D: Agents

Agents operate most strongly in the areas of fiction and general non-fiction but are increasingly picky about who they take on. They earn their living from their commission, and if your financial expectations from writing are not fairly substantial, agents are unlikely to feel that the commission will cover their costs (regardless of your literary merit).

What sort of deal are you being offered? August 2017

Few agents are interested in representing authors of scholarly, professional, reference or highly illustrated works, and nor, generally, do they have the specialist knowledge to do so to any great effect. Agents very rarely take on poetry, memoirs or short stories. They are also particularly hesitant about taking on authors writing in their retirement when the chances of building up a lasting full-time career are reduced.

Self-publishing is, as it says, something you do yourself. The intervention of an agent will not affect the terms you negotiate with printers, distributors or ebook-producers. An agent is unlikely to be interested in representing foreign/non-print rights for a self-publisher at least unless your book has become a hit.

E: Querying a contract

If you query the terms you are offered and the publisher responds 'deal off' then they did not seriously want you in the first place. In practice this reaction would be extremely rare.

Whether you have negotiated changes to the terms, or are told they are non-negotiable, be sure you understand what you are signing before you commit to it. To repeat our opening remarks: you are urged to take professional advice on a case by case basis e.g. from an agent, a lawyer with knowledge of the book industry, or from the Society of Authors which has a dedicated team of staff with considerable experience of vetting publishing proposals. For more, see societyofauthors.org.

© Society of Authors, August 2017

Cost: free (£2 for print and postage)
All SoA guides are free to members

84 Drayton Gardens London SW10 9SB
E info@societyofauthors.org
T 020 7373 6642
www.societyofauthors.org

The Society of Authors is a company registered in England No. 19993 and an independent trade union.