

SPEECH TO THE ALL PARTY WRITERS GROUP SUMMER RECEPTION

7 July 2015
Nicola Solomon



Nicola Solomon, Chief Executive of the Society of Authors, gave the following speech to the All Party Writers Group Summer Reception, following addresses from Pete Wishart MP, Chair of the All Party Writers Group, who gave a short speech on the work of the All Party Writers Group including aims for the future: fair contracts; e-lending; and John Whittingdale, Secretary of State for Culture, Media and Sport, who spoke on the importance of writers to the creative industries. Her speech was followed by Alexandra Heminsley, author, who spoke about the struggle to make a living as an author and appealed to parliamentarians to help in getting fair contracts for authors.

Congratulations to John Whittingdale on becoming Culture Secretary. It is good to have someone who actually knows about publishing. And congratulations and many thanks to Pete Wishart on becoming Chair of the All Party Writers' Group. We appreciate Government's effort to protect creators' interests through maintaining strong copyright laws. There are plenty of issues I'll be lobbying John and Pete on in future but today I want to urge Government to do more to protect authors, and indeed all creators (and I would say all SMEs) in the area of contracts.



What is the problem?

Virginia Woolf, one of the authors we represent, famously said, 'Writing is like sex. First you do it for love, then you do it for your friends, and then you do it for money.'

But there's precious little money about for professional authors these days, and what there is concentrated in the hands of fewer authors. The ALCS earnings survey found that the typical earnings of professional writers was around £11,000, but that the top 5% earn over 40% of all the money earned by authors.

Last year I saw the requests for assistance from our Pension Fund, which offers a bursary of around £2,000 a year to authors who have fallen on hard times. I was struck by the number of once well-known writers who had applied. And yet, some of them could be earning more if they could have access to their own work. The ALCS study showed that 70% of authors who relied on a reversion clause went on to earn more money from the work in question.

Catherine Gaskin was a novelist who left her estate to the SoA. When she died all her work was out of print. We reverted the works and are earning around £7,000 a year per title from republishing those works. That's far more than we are offering in pensions – yet many of our authors are unable to persuade publishers to revert the rights to even quite moribund titles. That means that works are out of commerce which could be earning money for the UK.

And that's just one area where contract terms offered to authors have significantly worsened. Authors are not in a strong negotiating position. Publishers are often large multinationals while authors typically work alone. Especially at the start of their careers they may have little or no

advice and are thrilled to be offered publishing contracts. Creators frequently need to negotiate with monopolies or with dominant players in highly specialised markets, such as scientific publishers. Individual creators are therefore at an inherent disadvantage when negotiating the terms of their contracts. Many contracts are offered on a take-it-or-leave-it basis. Advice from a lawyer is unaffordable for most creators. While agents, unions and professional associations, such as the SoA, seek to address this imbalance the situation remains unsatisfactory for the majority of creators.

Here's what David Vandagriff, an experienced US media lawyer, has to say about publishing contracts:

after having reviewed many, many agreements and proposed agreements between traditional publishers and authors, I am prepared to say these contracts, as a group, stand apart from the general run of business agreements as conscience-shocking monstrosities. They're simply designed to screw authors and to give publishers control over their work that is far beyond what is regarded as reasonable....¹

The SoA vets over 1,000 members' contracts a year and from some of the contracts I see that this might even be an understatement. We see many contracts where authors hand over all their rights for no advance and with no guarantee of exploitation by the publisher.

Why is this the time to address it?

There are two reasons why this should be addressed now.

1: Europe

The EU Study of 2013² showed that the UK is lacking the legal frameworks which protect creators in many other EU countries. It also shows that EU creators are often subject to onerous contracts and do not receive a fair share of the reward for their creativity. The Study says:

European authors are in a difficult position as demonstrated throughout this study. This patchwork of national provisions also prejudices exploiters of copyright works due to the uncertainties they face in an industry that is becoming more and more global.

The Reda report on copyright reform has now been adopted. In several places it affirms the importance of fair remuneration for authors and calls for improvements to the contractual position of authors and performers in relation to other rightsholders and intermediaries, notably by considering a reasonable period for the use of rights transferred by authors to third parties, after which those rights would lapse, as contractual exchanges may be marked by an imbalance of power. Many other European countries already have such legislation and to offer it to our authors is a powerful bargaining tool in EU negotiations.

2: At Home

Business-to-business legislation is in urgent need of review. The Consumer Rights Act has consolidated and clarified rights for consumers by taking laws out of many different pieces of legislation and putting them in one Act. What has been left for business is a ragbag of legislation, much of which does not deal with the realities of digital business and the impossibility of negotiating terms with global businesses. It needs reform in the same thorough and systematic way that was applied to consumer contracts.

¹ David Vandagriff, '[The Bookseller Hires Author Solutions Exec To Spout Propaganda](#)', *The Passive Voice*, 7 June 2013

² European Parliament Committee on Legal Affairs, '[Contractual arrangements applicable to creators: law and practice of selected Member States](#)', 11 February 2014

What are we asking for?

A review of laws applicable to creator contracts and introduction of legislation to address unfair contract terms. Or to put it more simply, the Magnificent 7, for **CREATOR** contracts.

C: clearer **Contracts**, including written contracts which set out the exact scope of the rights granted.

R: fair **Remuneration**. Equitable and unwaivable remuneration for all forms of exploitation, to include bestseller clauses so if a work does far better than expected the creator shares in its success even if copyright was assigned.

E: an obligation of **Exploitation** for each mode of exploitation. Also known as the 'use it or lose it Clause. This is the French model.

A: fair, understandable and proper **Accounting** clauses.

T: Term. Reasonable and limited contract terms and regular reviews to take into account new forms of exploitation.

O: Ownership. Authors, including illustrators and translators, should be appropriately credited for all uses of their work and moral rights should be unwaivable.

R: All other clauses be subject to a general test of **Reasonableness** including a list of defined clauses which are automatically deemed to be void and a general safeguarding provision that

any contract provision which, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the author shall be regarded as unfair.

One example would be Indemnity clauses which put all the risk on the author.

So that's it. **CREATOR**. These laws are not radical. They already exist throughout many European countries. These changes are easy and timely and we urge that they should be effected.

John Whittingdale, when Chair of this Group, said that:

The creative industries form a hugely significant part of the UK economy and will have a major role to play in our efforts to establish a more financially stable future. These industries are built around the talent and hard work of creative individuals.

We agree. And all we are asking for is the creation of an environment where authors can continue to flourish and receive a fair share of reward for their talents and hard work.

Further Information

Philip Pullman, President of the Society of Authors, says:



Authors often work in a solitary way, and our main task is very different from negotiating contracts and rights. It's not always easy to see our way through the thickets of legal language that grow so vigorously around the commercial exploitation of our work, nor to know how our own position with regard to our rights compares with others. When a paper like the EU Study shows how much worse the position of authors is in the UK than in many other countries, we can only welcome it strongly, and urge publishers to comply with its recommendations. The essential point is that the balance of fairness has tilted the wrong way, and it's often not only the work that's being exploited - its creators are too. It's time for that to stop, and for authors to be rewarded here as justly as they are elsewhere.

About the Society of Authors



The Society of Authors exists to protect the rights and further the interests of authors. The SoA was founded in 1884 and today has over 9,000 members writing in all areas of the profession (from novelists to doctors, textbook writers to ghost writers, broadcasters to academics, illustrators to translators). Authors are eligible to join if they have been offered a contract from an independent publisher, broadcaster or agent, or have sold over 300 copies of a self-published book or 500 copies of an ebook. The SoA offers a free contract vetting service to all authors and therefore sees many hundreds of publishing contracts each year.

About Nicola Solomon



Nicola has been the Chief Executive of the Society of Authors since March 2011. Her role includes protecting authors' interests in negotiations/disputes with publishers and agents, advising on tax, privacy etc and campaigning for authors' rights, including copyright, e-book rights, Public Lending Right, defamation reforms and freedom of speech. Nicola is a solicitor who was previously in private practice, specialising in intellectual property and media law. Nicola has an in depth knowledge of the publishing industry and the many associated legal areas, from copyright and defamation, to privacy, data protection and contract. Nicola is also a Deputy District Judge.

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