

## Contracts from Children's Book Publishers: What to Expect

Prepared by Harold Underdown for the New England SCBWI conference, April 12, 2008

### What will you find in a typical contract?

From company to company, book contracts are surprisingly similar, as if someone handed out a template at some point to every company, which they happily adopted, but have added their own flourishes to over the years. Virtually all contracts will have the clauses listed here somewhere. They may not appear in this order, they may have different names, and they won't all use the same wording, but you will find them.

This is a map of the major landmarks, to help you find your way through a contract. For more detailed information, see the resources listed at the end.

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### The grant of rights

This is essential—if you don't give a publisher the right to publish your manuscript as a book, then it won't get published. Note that in spite of the word "grant" you are not giving up your copyright in the work. You are only allowing the publisher to *use* your copyright. This clause will specify what rights you hand over to the publisher, possibly with more detail to follow in the Subsidiary rights clause.

### Manuscript delivery and related obligations of the author

What you have to do. This usually covers delivery and revision of the manuscript, and reviewing the proofs, with deadlines. There may be a non-compete clause ("this shall be the author's next book/ next book on this subject), but this is less common today.

### The publisher's obligations

Publishers do make some kind of commitment to publish the work within some kind of time frame, but with exceptions and limitations. They will give you author copies. And they will not make any other commitment, about marketing or anything else, unless you are a very big name. The publisher's financial obligations are usually covered separately, under:

### Royalties

Trade publishers typically pay authors 10% of the list price of a hardcover, with an advance that must be earned back from the royalties, and you split these 50/50 with an illustrator if it's a picture book. Some publishers pay on net price, which should mean the price they receive when they sell the book; net price should be defined in the contract. Expect lower royalties for paperbacks, big books, etc., if other formats are even

mentioned. Watch out for "special sales" and particularly what kinds of sales are counted as special sales.

### **Subsidiary rights**

Sub. rights cover all the uses of your work made by companies other than your publisher. Your publisher pays you royalties. If another company gets the rights to do a different format or some other use, they pay your publisher royalties or a fee, and your publisher divides the money with you. Most sub. rights are divided 50/50 (as with royalties, your share is split with an illustrator, if there is one). Common exceptions include "First serial" (magazine publication), from which you typically get 80 or 90%; and foreign rights, for which you may get 60, 75, or even 80%. Other exceptions can sometimes be negotiated, especially if you have an agent.

### **Ebook rights**

Ebooks have caused more changes to the standard contract than anything else in the past 20 years. Publishers want ebook rights, and you can expect to see them in your grant of rights. Royalties and sub. rights amounts will be specified somewhere. Watch for publishers to charge off conversion to an ebook format as if it were an advance. Ebooks can also affect out-of-print status, and so you need to check to make sure that a book is not considered to be in print if it is only available as an ebook.

### **Accounting and the right to audit**

More obligations of the publisher, but covered towards the back of the contract, where the legalese gets denser and murkier. Typically the publisher promises to issue quarterly statements and pay any royalties owed. Watch out for the dread *joint accounting*, though this is not as common these days. Authors do not have to accept the accounting on trust, and so the contract will spell out how an audit can be done and who pays for it.

### **Warranties and indemnities**

More obligations of the author, in which you promise that you haven't made an agreement with any other publisher, and that you haven't violated anyone's copyright, committed libel, or done anything else for which the publisher could be liable. You also promise that if you *did* do any of those bad things, you're responsible and have to pay legal fees and any damages. However, and here the legalese can get almost impenetrable, the contract also may spell out how you and the publisher will work together in the event of some legal problem (and in practice, publishers generally do not expect authors to share in legal costs).

### **The option clause**

Less common than it used to be, this clause gives the publisher the right to see your *next* manuscript. If it's not limited to a type of book or the next book in series, it can be a problem for you, particularly if it gives the publisher the right to wait till after your first book is published to make a decision. This clause can often be negotiated out of a contract or have limits put on it.

### **Termination**

What ends the contract? If the publisher fails to publish the manuscript, or the book goes out of print (more on that below); or if you do not deliver an acceptable manuscript. What can cause the contract to be terminated and the steps that must be followed may be spelled out in excruciating detail.

### **Out of print**

There *should* be an out-of-print (OP) clause in a contract, and it should obligate the publisher to revert the rights granted in the contract back to the author. Due to the existence of ebooks and print-on-demand (POD) technology, you need to see how this is defined. Typically, the book is considered OP even if it is available as an ebook or through POD, unless it sells a minimum number of copies per year.

### **Other legalese**

Various other clauses can take up space in your contract, covering such topics as how disputes are handled or what happens when a clause in the contract is violated. Look them over, but understand that they do not come into play very often, and have been inserted at the insistence of a company's legal department, and so are very difficult to change.

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### **Additional Resources**

Chapter 23, *The Complete Idiot's Guide to Publishing Children's Books*, 3<sup>rd</sup> edition

" SCBWI Sample Children's Book Contract," by Mary Flower and Sue Alexander.

*Kirsch's Guide to the Book Contract: For Authors, Publishers, Editors and Agents*, by Jonathan Kirsch. Out of print, but available used.