Understanding and Negotiating
Book Publication Contracts

Audience FAQs & Answers for Presenters

# I thought publication contracts were “take it or leave it.” What leverage do I bring to the negotiating table?

Copyright laws give authors something very valuable to bring to the negotiating table: their copyrights! Copyright confers on the author of a work certain exclusive rights—such as the right to reproduce the work and to distribute copies of it to the public—for the life of copyright. Currently, copyright protection for works by an individual author lasts for the life of the author plus seventy years. Without your permission to use some of your copyrights, your publisher cannot publish your book. So even if negotiating feels tough, remember that with your manuscript and your copyrights, you bring something very valuable to the table.

# If I try to negotiate, won’t this offend my publisher and cause it to revoke its offer?

In all likelihood, no, especially if you negotiate in a respectful and reasonable way. In fact, being a polite, realistic advocate for yourself and your book may engender more respect from your publisher. In most cases, the worst that can happen is that your publisher says “no” to your requests, which doesn’t leave you any worse off than you were to begin with. You can then decide whether to try to reach a compromise with an alternative version of your request, work with a different publisher, or seek additional assistance with the negotiation. Or you may choose to accept the terms and sign the contract, knowing that at least you tried to craft it to fit your goals. But if you are successful, you’ll thank yourself in the future for making the effort to negotiate for terms that work for you and your book.

# Are the terms I can successfully negotiate likely different for university presses vs. trade publishers?

All publishers have different business models, and publishers may even have imprints that publish different genres of books and follow different business models (and some university presses have substantial trade programs). So it is difficult to draw any hard and fast rules for any category of publisher. That said, there are some general tips that can guide you as you consider what type of publisher may be suitable for your book and your goals. For example, it is uncommon for university presses to offer sizeable advances to authors—most don’t offer advances at all—whereas advances are generally expected in trade publishing. Similarly, university presses may be more amenable to allowing books to be distributed under open access terms (like a Creative Commons license) than a trade publisher, since they are usually less concerned with maximizing profits and open access may align with their academic mission. On the other hand, trade publishers may offer advantages for certain authors. For example, they often have larger distribution networks (though online bookselling has diminished this advantage somewhat), and they may offer better marketing and advertising support.

# Should I have an agent or an attorney negotiate for me?

For many genres (such as fiction and trade nonfiction), literary agents function as gatekeepers to publishing houses. It is therefore common for authors of these types of books to be represented by agents rather than to negotiate directly. Conversely, many academic presses accept submissions directly from authors, making it less common for academic or technical authors to have agents—though it’s not unheard of, and some agents specialize in working with academic authors. Even if you don’t need a literary agent, you may still want one. Literary agents typically work on commission—i.e., a percentage of your royalties.

Literary attorneys are lawyers who specialize in legal matters related to the business of publishing, including contractual negotiations. By law, only attorneys can give legal advice, so if you have specific questions about the legal effects of your agreement, you might need to engage an attorney. Typically, literary attorneys negotiate publication contracts for authors, but they do not get involved in book editing. Literary attorneys often charge a per-hour fee, though some work on commission.

Although it may be difficult or costly to hire an agent or an attorney, such a representative can provide expertise about how best to conduct negotiations and offer distance between you and your publisher if the negotiation gets sticky. Regardless of whether or not you have representation, understanding your own agreements is essential to getting what you want out of the publishing relationship.

# What should I expect the negotiation process to be like?

Every negotiation follows its own trajectory, but it is not uncommon for a contract to go through multiple drafts before it is signed by the parties. Usually, this process begins with the publisher sending you its template contract with the terms it generally seeks from authors; other times, a publisher may first send an offer letter with basic terms listed. Often, it will be up to you to initiate negotiations, either by marking up the contract or corresponding with the publisher about changes you’d like to implement in the contract. You may go back and forth, each making suggestions and accepting or rejecting counter-proposals, and the contract may go through multiple drafts before the agreement is finalized.

# When should I consider walking away?

As the negotiation proceeds, it may become clear that you and the publisher just don’t see eye to eye. If that happens and you’ve clearly reached an impasse, it’s okay to walk away. Though it may be disappointing in the moment, it is better in the long run that you find the right publisher for your book. Remember, not all publishers are the same, and just because one wasn’t a good fit doesn’t mean that you can’t find another that will fulfill your needs. In fact, there are more publishing companies pursuing innovative business models now than ever before. For example, some publishers specialize in publishing digital-only books, and some university presses now offer open access publishing programs for monographs. Some authors may also want to consider self-publishing, which has become a much more viable option since the advent of e-books and “a la carte” publishing services.

# What form should my final contract take?

A best practice for book contracts is to make sure everything the parties agree to is written down, and that everyone signs the document reflecting this agreement. This provides a record of the agreed-upon terms and helps ensure that everyone understands the substance of the agreement. In fact, certain kinds of contracts, such as those that transfer exclusive copyright rights or cannot be performed within one year, must be in writing and signed by the book’s author (or her representative) to be valid and enforceable.

# What do I need to be aware of if I co-authored my book?

When more than one author contributes to the creation of a new work and each author intends their contributions to be merged together as a whole, the copyright in that work is shared (that is, co-owned) by the authors. In this case, the work is known as a “joint work.”

In practice, many authors negotiate a book agreement together with their co-author(s). However, by law, each author of a joint work can authorize a wide range of uses of the copyright in the work without the permission of fellow co-authors. Each author can transfer her ownership interest in the work, or she can grant other people a *non-exclusive* license to make specific uses of the work. Unless they made an agreement to the contrary, each author of a joint work has a duty to give any other author a per capita share of revenues made from exploitations of the work, regardless of whether the co-author knew about, objected to, or supported the deal. This means that if a book has two authors, they are each entitled to 50% of the profits, even if one of the authors only did 10% of the writing. Multi-author contracts often stipulate the division of royalties, which is typically, but not always, an equal split.[[1]](#footnote-1).

1. . **Authors Alliance is grateful to Arcadia—a charitable fund of Lisbet Rausing**

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