
Novelists' Ink

The official newsletter of Novelists, Inc. — a professional organization for writers of popular fiction

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Contracts: Top Ten Things to Negotiate and What's Not Worth Your Time

By LAURA RESNICK

Nearly every expert queried for this article hated the title. "There are no things which are not worth your time," most of them said—even those who then proceeded to coherently explain precisely what isn't worth your time.

"There are no 'top ten' things," they all said. For this reason, some refused to comment at all, while most kindly agreed to offer their advice on the understanding that every individual case is different and no good agent, editor, or literary lawyer likes theorizing in a vacuum.

Having now properly qualified that which is to follow, here goes—in no particular order of importance, because the respondents stressed that *they* weren't ordering their points of importance.

Top Ten Things to Negotiate

(1) Option Clause.

This one came up often, with varying degrees of passion. Considering that I have heard at least one multi-published author (and more than one new author) say, "What's an option clause?" I thought it worth moving this to the head of the list.

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Virginia Kidd, a literary agent, probably puts it most succinctly: "Negotiate for a *limited* option clause.

Agent Jane Dystel spells out the details of a limited option clause:

(1) The option should be for the author's next book, its classification to be specified according to what the present book is (i.e., fiction, nonfiction, fantasy, romance, etc.)

(2) The author should be required to submit no more material (and usually substantially less material) than he did to sell the first book to the publisher.

(3) The publisher should have a deadline of no more than sixty (60) days to consider the proposal for the next book after it has *accepted* (not *published*) the first book.

(4) If the publisher makes an offer which the author does not want to accept, the author should be free to show his proposal to another publisher. There should be no "matching" or "topping" privileges.

Russell Galen of the Scovil Chichak Galen Literary Agency strongly recommends that any matching or topping clause should be deleted from the contract. A "matching" option means that if you, the author, want to accept an offer from another publisher, you must give the option holder (your current publisher) the right to match the new offer and thus claim the book. A "topping" privilege means that the option holder must top the new offer, usually by 10%.

The limited option clause, Galen says, is basically a promise by the author to be a nice guy and give the current publisher a fighting chance to keep him; the author still retains sovereignty, the right to say yes or no. But with a matching or topping

***"Negotiate
for a
limited
option
clause."***

— Virginia Kidd

(continued on page 7)

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Editor Resigns

March 10, 1995: With considerable regret and apologies to the members of NINC who elected me, I find that the press of other business has made it impossible for me to continue as editor of *Novelists' Ink*. It is a great disappointment to me, but my resignation is the best choice for all of us.

Thank you all for your support while I was in office. I look forward to seeing you all again at the Conference in October.

— Claire Bocardo

PRESIDENT'S COLUMN

A Word from the Front

With a great deal of trepidation and armed with nothing but a fancy fountain pen, I strolled into the Sam's Warehouse Club on a sunny Saturday afternoon. What am I doing here? I asked myself, as I weaved through the hordes of shoppers pushing trolleys loaded with lifetime supplies of soft drinks and cereal and sugarless Jell-O. How did this happen to me? I'm a serious fiction writer, sort of. Surely I don't do booksignings at Sam's?

But it seems I do. My publicity person at Ballantine called not once but three times to explain to me the vast importance of this gig, which I think I can summarize in a few words: They're a big account and they buy a lot of books. Sure, I thought, but last I heard, weren't bookstores buying books, too? So why are we favoring a warehouse store in a town (Tulsa) which in the last six months has gotten three new "superstores" and is building a Borders?

As I explained, I generally refuse to buy books at Sam's, because I think we should support bookstores. What

a ding-a-ling, my publicity person said, in not exactly those words. Sam's is a bookstore. The warehouse stores carry most of the major, bestseller-type books, usually two-to-three hundred titles, and certain niche books as well. And the discounting is at least forty percent and often more.

And so I went forth and signed.

It was actually a very pleasant, if somewhat bizarre, experience. ("Here's my new book—oh, let me hold your jumbo bag of dog chow.") The best part of it was getting to chat with the rep from Advanced Marketing

Services (AMS), who inexplicably flew in from San Diego for this "event." AMS supplies books to all the warehouse stores—Sam's, Price Club, PriceCostco—throughout the nation.

As she informed me (this was subsequently confirmed in *Publishers Weekly*), AMS is usually the largest single buyer of a best-seller's print run. They will typically place sixty copies of a book in each store—and they have over a thousand stores.

Take a deep breath and multiply.

And what's more, they rarely have returns. Of course, at their discount rates (my \$22.00 hardcover sold for \$12.99), why would they?

After the AMS rep wowed me with all this purchasing information, I asked for an example.

"Well," she said, "you've heard of John Grisham?"

"The name rings a vague bell," I replied.

"We're buying 750,000 copies of his new hardcover"—she paused, an exasperated expression on her face—"and he still won't do a book-signing for us!"

I informed her she could've gotten me for half as many copies.

Obviously, the warehouse clubs are a major force with which to be reckoned.

Raising a Warning Flag

My lingering question is this: What does all this discounting mean for us writers? Frankly, I'm not entirely sure. Common sense tells me that, even though I know the AMS/warehouse clubs' per-book profit margin is small, in order for them to discount books as they do, they must buy at a reduced rate. How does that impact our royalties? According to my current contract, my royalties are based upon something called the "invoice price," which traditionally has not varied from one purchaser to the next. I suspect that may be about to change.

What's the point? Well, I'm raising a warning flag. This is something that needs to be considered next time you negotiate a contract. Whenever I talk to new writers, I try to tell them (usually unsuccessfully) that there are other clauses in their contract more important than the one that details the size of their advance. This could be another equally important subject to be addressed.

Just as model clauses are needed to deal with the burgeoning field of electronic rights, we must protect our profits from being slashed by the growth of these high-discount, bulk-buy outlets. As the sales end of the publishing business changes, so must our contracts, or we will be caught on the short end of the stick. Again.

And next Thursday, I'm signing at something called "Media Play."

A Word About the Membership

This month the membership rolls will be examined to determine who has and hasn't paid their dues. Our Membership Chairman, Karen Crane, will be hard-at-work making sure no one slips through the cracks. Every one of us is important, and every one of us depends on the others for strength and support. We don't let anyone get away from NINC without a personal, one-on-one attempt to bring them back to the fold.

Obviously, this is a lot of work, so let me thank Karen and her committee in advance for all the time I know they will have to spend on the phone and away from their word processors. The sacrifice is very much appreciated. I think what we're trying to do is important, and we need all the popular fiction writers we can enlist to the cause. And by the way, if you have writer-friends who aren't members of NINC—why aren't they? Do me a favor—broach the subject next time you see them. If they're interested (or even if they're not), I'll be happy to send out some information or give them a call. Almost inevitably, as we grow in size, we will grow in stature.

An Organization for All of Us...

I've received a lot of intriguing mail and phone calls from various individuals who are interested in the idea of a multi-genre organization of popular fiction writers. Some simply want to be a part of it; others are non-writers who have projects or proposals in which NINC members might play a part. If any of these projects moves beyond

the idea stage to the reality stage, there could be great things in the works for us popular fiction types.

Time and again I've heard variations on "Why is so much attention given to books that almost nobody reads, and so little attention given to books almost everybody reads?" Do I sense a groundswell? Maybe I'm just kidding myself, but I think I do. I think we are creating a coalition that, over time, may be able to bring a disaffected majority into the limelight where it belongs.

To my mind, NINC is doing the right thing at the right time by trying to attract members of all genres. Genre-specific organizations were the first step, an important step. Now, at least one genre-specific organization exists for each major literary genre. The next natural step is to coalesce the membership of these organizations into one larger group with a broader, more far-reaching influence. The point is not to shortchange a particular genre, but to create an organization with members in many genres that will consequently have more influence than an organization restricted to a single genre—even a genre that dominates half the paperback market.

A New Name on the Masthead...

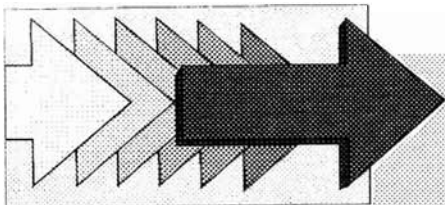
As you may have already noticed, we have a new newsletter editor—Patty Gardner Evans. Patty exemplifies dedication and the spirit of volunteerism to the highest degree. She has agreed to take on what is easily the most time-consuming job in this organization—midyear and on short notice, no less. She has already put together one great issue and has plans for many more. I think you'll be pleased—and perhaps surprised—by some of the innovations and additions to this newsletter in the months to come. The newsletter is still NINC's primary medium for communication and the exchange of ideas—both important components of NINC membership. As far as I'm concerned, nothing we do is more important. Let me extend to Patty one huge and ongoing thank-you.

That's all for now. Stay in touch.

— William Bernhardt

Editor's Note: More and more NINC members' books are showing up in the warehouse clubs. To determine how much of a problem this is, if members send in their contract clauses dealing with bulk warehouse sales and how such sales may already have had a negative impact on royalty income, responses will be reported in a future article—requested anonymity assured, naturally.

To obtain a copy of the full minutes of the Board of Directors' meeting, send \$2 plus SASE to the P.O. Box. For an updated copy of the Bylaws, send \$2 plus SASE. For a copy of the Treasurer's Report, Send \$1 plus SASE to the P.O. Box.



Wanted: Authors

Writers are notoriously antagonistic to organizations. We do our work alone, we like to believe, just us and the words.

Sorry, friends, those days are behind us, now.

Novelists, Inc. has grown up. We are now one of the top writers groups in the country. We have a standing membership of more than 500. We have taken our place on national coalitions, and we have put together a wide-ranging program of services to the creators of popular fiction.

But none of that happens by magic. Everything that this organization does, from the newsletter to the convention to the rest of it, requires voluntary effort.

Lots of voluntary effort. More effort every week.

That's where you, the individual members, come in. The Nominating Committee is seeking potential candidates for the 1996 Board of Directors and for

the newly revamped 1996 Nominating Committee. This year we are asking members who are interested in such offices to contact the Nominating Committee directly to express their willingness to serve.

This is not the time for false modesty, nor is it the place to try the "I'm-too-busy-chasing-my-career" stunt. Everybody is busy in this world. Everybody has a great many demands on their time and energy.

But if this organization means anything to us as a group, we have to be ready to support it as individuals.

Signal your interest to Evan Maxwell, PO Box 187, Anacortes WA 98221, Fax 206-293-1835, e-mail ANNEVAN@aol.com.

Or contact other members of the Nominating Committee, which includes Robyn Carr, Jasmine Cresswell, Debbie Gordon, Karen Harper, Joan Hess, Barbara Keiler, Lass Small, and Joan Wolf. -EM

LETTERS TO THE EDITOR

Letters to the Editor is the most important column in our newsletter, since it is the monthly forum in which we can all share our views and express our opinions. Anonymous letters will never be published in NINK. Upon the author's request, signed letters may be published as "Name Withheld." In the interest of fairness and in the belief that more can be accomplished by writers and publishers talking with one another rather than about each other, when a letter addresses the policies of a particular publisher, the house in question may be invited to respond in the same issue. Letters may be edited for length or NINK style.

NINC Founder States Original Purpose

I wish to respond to Shirlee Busbee's letter in the April 1995 issue of *Novelists' Ink* and her assertion the original purpose of Novelists, Inc. was to deal primarily with the problems faced by romance writers. This is simply not true. I know, because I am one of NINC's founders.

Back in 1988, four of the five founders of NINC had completed terms of office on the Romance Writers of America, Inc. board of directors and were approached by members of that organization to found a new one. First, because we had the necessary experience. We had, among us, two presidents, two secretaries, a newsletter editor, a national conference coordinator, two conference location sitters and twenty-five years, collectively, on the board of a national writers group. We also had pretty comprehensive experience with bylaws, Articles of Incorporation, audits and auditors, budgets and finances, and contract negotiations—from those dealing with conference hotels

to those dealing with magazine publishers. These experiences are not unique, though finding them in five people who had already done them together—and remained friends—was perhaps rare. What was unique about us, and was, I believe, the second reason we were approached, was our shared experience with romance writers, who, over the years we were involved with RWA, had expressed a need for an organization that was *not* romance oriented. Most of them wanted an organization for multi-published multi-genre writers, because that is who they were and what they did. A smaller percentage, but no less vocal, were writers who classified their books as women's popular fiction, but who belonged to RWA because it was the "next best thing" to what they really needed/wanted.

The five of us were reluctant. Sure, we were tired, and yes, we looked forward to devoting the hours previously spent on organizational work to becoming more prolific writers. But we were also skeptical. Did writers really want such an organization? Or was this an effort to get a "new and improved" romance writers organization started. Because if it was the latter, the five of us were not interested. Not only did a romance writers group already exist, it was one we had devoted our time and talents to, one we remained members of.

For ten months nothing happened. Then one of us went to a national writers conference and returned with 60 business cards from writers wanting to join this multi-published multi-genre writers organization that did not yet exist!

And Novelists, Inc. was born.

It debuted as Women's Popular Fiction Writers Association. A title the founding members—our corps of sixty or so—instantly disliked. Too long (and who could remember WPFWA?), and misleading. What western writer was going to join a group of women's popular fiction writers? What science fiction writer? What mystery writer?

There has been much talk of late about advocacy and "clout." These are admirable aspirations, and I look forward to NINC gaining the prestige and power such goals will require. These were certainly our original dreams, if not our original promises. Those were quite simple but very specific. In the beginning we promised a newsletter with as many pages as necessary for members to communicate with each other, a roster for those who wished to correspond directly, and, maybe, a conference. And we promised to do whatever we could to bring together writers of book-length fiction—from all genres, publishing houses, imprints.

When Ms. Busbee questions the direction NINC is taking with its efforts to attract members who write outside the romance genre, she speaks as if this is a *new* direction. It is not. An organization exclusively for romance writers already exists. It is called Romance Writers of America, Inc. If you are a romance writer and do not belong, I suggest you join. If you already belong (and I do) but feel it doesn't meet your needs, you'll have to take that up with the RWA board and membership. NINC is not the answer to that problem. It was never meant to be. It is, as it has always been promoted, an organization for multi-published multi-genre fiction writers, including writers of romance.

— Marianne Shock

Reply to Writing as a Control Issue

Re: Sylvia Baumgarten's letter on writers and control: "Through the years, I've noted with surprise how many of the *romance* [italics added] writers I've met have stories of dysfunctional childhoods...and/or abusive marriages, etc."

I've had the opposite experience with the romance writers I've met, most particularly in regard to the question of marriage. They have non-abusive, highly supportive, resilient, and loving marriages.

My personal belief is that the desire to control is human and universal. How that desire is expressed is individual and specific.

People everywhere are unhappy and/or dysfunctional. Some of these people turn to writing (and reading) mysteries, science fiction, suspense, horror, literary fiction, etc. Some highly functional people write (and read) all kinds of fiction.

Please, let's not add to the stereotype of romance authors as writers (and readers) whose lives are so dysfunctional and unloving that they retreat into romances. It simply isn't true.

For the record, I had a non-abusive childhood and have enjoyed a fine marriage for 28 years.

— Ann Maxwell/Elizabeth Lowell

Disagreeing with Romance Exclusivity

I am in complete disagreement with Shirlee Busbee about wishing to see NINC remain a romance writers' organization. However, the apparent polarization of views on this issue—between those who want NINC to be a romance writers' guild and those who want it to be a popular fiction writers' guild—has been mentioned often enough in recent issues of *NINK* that it strikes me as one that really needs to be addressed and decided upon by everyone involved with NINC. Just as some writers are apparently discontented with NINC's leaning away from being a romance genre guild, others are disappointed with its obvious romance genre bias after having been told about its multi-genre aspirations. Despite the low attrition rate quoted several times, we do lose non-romance writing members over this very issue, and we fail to acquire many more over this same issue. I've come to think that nobody's aspirations about which way NINC should go will be satisfied without our directly addressing the question as an organization.

Possibly the way to begin finding a solution to our split personality would be to define the two opposing positions (as well as to find out where everyone stands).

After all, why spend a penny of the treasury on efforts to expand the membership into a truly multi-genre organization if the current members disagree with and disapprove of this goal? What is the ultimate goal in developing a multi-genre organization? What are the benefits we could have which we don't have now?

On the other hand, do we really need *two* guilds for professional romance writers? What would NINC do specifically for romance writers which RWA's Published Authors Network can't? These are certainly questions I would want answered before renewing my membership and paying my dues.

Just as Ms. Busbee suggests she may feel compelled to drop her NINC membership if it does not clearly define itself as a romance writers' organization, I will have to drop out if it *does*. As a two-genre author, I have been particularly interested in NINC's multi-genre aspirations, which is why I have contributed free time to NINC in the form of chairing or working on several committees and writing numerous articles for *NINK*. I am not, however, interested in paying dues to two romance writers' guilds both trying to accomplish the same things for the same genre; at that point, I would cut bait.

— Laura Resnick

Editor's Note: Dictionaries, thesauri, and most of us don't differentiate between "organization" and "guild." The IRS does. Largely because of past PAC and trade union activities, the IRS defines a guild or union as the bargaining agent for its members as well as permitted to lobby as their official representative and to donate members' dues and contributions to the lobbying efforts of others. The Screen Actors Guild is an example. Guilds are not allowed non-profit or tax-exempt status, and NINC has been a non-profit, tax-exempt organization from its inception.

LETTER FROM THE EDITOR

Novelists, Inc. membership spans writers who have written two books to those who have written many more books than they are old. Trying to meet the newsletter needs of all members is challenging, although not as challenging as it could be if membership included the nonpublished, nonfiction writers, poets, etc. Still, the challenge is more than adequate. In order to try to meet it, several new features are debuting this month.

A number of members still mourn the demise of *The Devil's Advocate*, but there were problems with *DA*. The biggest one was that no one sent in any letters for it; another was that arguments dragged on month after month until everyone was thoroughly sick of it, and a third problem was that arguments degenerated into personal attacks—both of which probably accounted in large part for problem number one.

Point/Counterpoint will hopefully escape those problems. The *Point* will be presented one month and two months later agreements and disagreements will be published; nothing will be published after that on the same topic. Send your suggestions for *Points* to be considered by the editor. All *Points* will be published anonymously so controversial subjects, related to writing, can be brought up without fear of reprisal.

Online will appear bimonthly, for now, and will provide information on computer programs, online short-cuts and services, new computer peripherals, analyses of new computer models and components, and anything else computer-related. When you come across something you think would be helpful to other members send it in.

Are We There Yet? is *NINK*'s version of the frequent refrain parents hear from the backseat. Also bimonthly, for now, this feature will deal with progress, dead stops, detouring, roadblocks, and backtracking as we travel toward the goal of perfect contracts, perfect royalty

statements; fair play by publishers, editors, and booksellers; improved reviewing for genre books; etc.—in other words, as the feature intro says, whatever affects our income, working conditions, blood pressure, and mental health. Send in good and onerous contract clauses, unusually nice or lousy treatment by publishers and booksellers, negotiating breakthroughs, and anything else that applies.

Dispatches from the Front is a “war stories”-type feature that will run monthly on the back page. If something funny, black comedy to slapstick, happens to you, send it in. Anonymity will be preserved, of course, if you desire it.

Starting these new features is a risk, especially when one considers that past editors have had to solicit letters at the last minute to have anything to run in *Letters to the Editor*. Even now, JoAnn Ross has not received enough best-seller lists, despite four requests by various members in *NINK*, to compile a list to publish. Scant suggestions have been forthcoming concerning the possible use of the Author Coalition money. *NINK* does not have a paid staff so the success or failure of these new features, and the newsletter as a whole, depends on the membership volunteering articles, news, ideas, and tidbits.

Not everyone legitimately has time right now to do an article that requires in-depth research, but everyone has time to jot down on a postcard a new computer writing program they've run across, send in a newsclipping, or dash off a brief bit about the time your editor came to stay with you and the cat wet her bed the first night. The “deadline” excuse may impress unpubs, but deadlines loom for all of us here; that's why we were able to join *NINC* in the first place, because we're published, *working* writers. We all have to work a bit on the newsletter, too.

- PGE

Last month Alison Hart was the latest to request a small blurb about *NINC* to post on computer networks. In answer to those requests:

“Novelists, Inc. is an organization for writers of popular fiction, the bread-and-butter of the publishing industry. Members are multi-published, everyday working writers with mass-market appeal in mainstream and all genres. Dedicated to bettering the status of popular fiction writers, Novelists, Inc. offers a broad networking base of hundreds of writers, a newsletter which informs about the latest trends in the publishing industry and issues that directly affect a writer's income, and an annual conference geared solely toward the working, multi-published novelist. Membership requires at least two popular fiction novels published by bona fide houses, one novel published within the past five years. Membership information is available from Novelists, Inc., P.O. Box 1166, Mission KS 66222.”

Help Wanted

Two editorial assistants. No pay, but easy work, little time required.

One assistant to edit *Online*, should be online, computer literate, and enjoy keeping up with new technology.

One assistant to edit *Dispatches from the Front*, should have good sense of humor.

Please apply to the *NINK* editor.

Contracts

(Continued from page 1)

clause, the author has given up the right to decide who he wants to do business with.

(2) Reversion Clause

Russell Galen points out that many books go out of print within a year or two of publication, and if the author's career eventually takes off, reprint rights in the reverted books can be worth serious money. According to Galen, the standard reversion clause is *not* acceptable, and there are several items that should be negotiated. He lists the following four points:

(1) Many contracts will say that, out of print or not, a book can't revert until a certain number of years have passed. Try to keep this to two years; five is bad but not horrendous; more than five should be "resisted."

(2) Many contracts will state that the publisher retains the rights if the book is still in print in any edition the publisher has licensed, which could tie up a book for a long time in the case of a world-English-language or world-rights deal. As the author, you want this clause to say the book becomes revertible if it is not in print *in the USA*. As Liana Cassel of Writers House Inc. points out, you don't want to find that your book is out of print in the U.S. but can't revert to you because of one foreign sale to Indonesia.

(3) The book must be revertible if it is not in print in a trade hardcover, trade paperback, or mass market edition. Otherwise the publisher could hold onto the rights even if the only edition in print is a non-trade hardcover (i.e., one not sold through stores but through book clubs, mail order, collector's editions, etc.). This is especially important with the uncertainty about what future technology may devise in terms of book production.

(4) If the deal was a hard/soft deal, the publisher should not be able to hold onto the book by licensing rights to a mass market reprinter. If you sold the book hard/soft, it was with the expectation that the publisher would do a hardcover and then its own paperback. If it lets the paperback go out of print, then it must let you terminate the contract; it shouldn't be able to hold onto the rights by dumping paperback rights onto a third party.

(3) Electronic Rights

This is both a vague and controversial area at this time, since, as Liana Cassel says, the success and money in this market is still undetermined and unclear. If the publisher insists on retaining these rights, Virginia Kidd suggests limiting them in some way. Try to get a

separate advance and royalty rates on the work's electronic rights, and specify that these rights are not part of the subsidiary rights split. ("For God's sake," she adds, "don't settle for the 50/50 split they want to give you.")

Both Kidd and Cassel recommend that if a publisher does retain electronic rights, you negotiate a clause indicating that your percentage or royalty will be negotiated *at a later date* in the event that the publisher licenses or exercises those rights.

F. Robert Stein, literary lawyer, adds that the author should refuse to grant the publisher the right to create derivative works in electronic form (e.g. CD-ROMs), since such a grant would entail a loss of creative control over the final product.

(4) Royalties

"Publishers kill authors by creative bookkeeping," Richard Curtis, literary agent, writes in his book *How To Be Your Own Literary Agent*. For this reason, Curtis recommends you pay particular attention to the contractual clauses relating to the details of royalty reporting. Curtis points out that there is no statute, uniform code, or tradition defining the form and content of royalty statements. Every company has its own idea of what and how information should appear (and not appear) on its statements. The only thing they all have in common is that none of them adequately reports what the author needs to know.

Curtis recommends the following eight items as necessary for you, the author, to have a complete picture of your book's financial activity:

- (1) Number of copies printed
- (2) Number of copies shipped or distributed
- (3) Number of copies sold
- (4) Type of royalty: Regular, special discount, Canadian, foreign export, etc.
- (5) Royalty rate, in terms of percentage and/or a dollars-and-cents amount
- (6) Number of copies returned
- (7) Details of reserve against returns, expressed in dollars
- (8) Details of subsidiary sales, contracts, and income

Curtis acknowledges how unlikely it is at this time that any but the most successful authors (and perhaps not even them) can negotiate contractual rights to all this information. However, he points out that to make such information standard and available to all writers is a task worthy of professional writers' guilds.

(5) Auditing

Liana Cassel says that many publishers have a standard clause about royalty reports being binding →

*"...the
standard
reversion
clause is not
acceptable..."*
— Russell Galen

Contracts

(Continued from page 7)

"unless notice has been made to the publisher within 2-3 years." She recommends negotiating out such time-limitations for auditing; they force the author to police the publisher's accounting department (which should not be his responsibility) or pay for a costly audit every three years just to make sure that he *isn't* losing any money through royalty reporting errors.

(6) Acceptability Language

If the publisher insists that the first half of the advance must be repaid in the event that they deem the final manuscript unacceptable even after the author has made the requested revisions, Raymond E. Feist of SFFWA's Contracts Committee advises the author to ensure that the contract guarantees the writer can wait to do so until he makes another sale with the book, thus repaying the first advance with proceeds from the second.

(7) Publication of the Manuscript

The contract should ensure that, having purchased and accepted your book, the publisher must publish it within a given time frame or else the rights revert to you (without your needing to pay back the advance). Jane Dystel recommends this time frame be within eighteen (18) months of accepting the completed manuscript.

(8) Subsidiary Rights

Finding a great deal of cross-over in the terms "subsidiary rights," "ancillary rights," and "multi-media rights," I herein use the term to refer to all of the above, excluding the relatively new and amorphous electronic rights referred to in Item (3).

**"Publishers
kill authors
by creative
bookkeeping."
— Richard Curtis**

The general consensus is that you should hold on to these rights—unless there's a good reason not to. This is a topic in which the words "each individual case is different" really take on meaning, and therefore it cannot be covered adequately here.

As Raymond Feist writes in "Contract Article V, A Little More Money: Sub-Rights," in the *SFFWA Bulletin* (Spring, 1992): "Some agents don't do well with overseas sales. Your agent should be forthcoming about that; don't be afraid to ask him or her. Seventy-five percent of a translation sold through your American publisher is better than 100 percent of no sale. An agent willing to work with the Foreign Rights Department of your publisher will often suggest they

split up rights along the lines of who has the stronger connections in those markets."

On the other hand, if you have no agent, it doesn't mean you can't possibly sell foreign rights without going through your publisher. Feist's own Hungarian and Polish sales resulted from overseas publishers having read his work in English and hunting him down. Also, as you build a body of work, you may find it advantageous to have retained your foreign rights and thus be able to eventually sell several books at once to a foreign publisher after your work becomes in demand overseas.

Virginia Kidd not only recommends retaining foreign language and U.K. rights, she also suggests that if this is not possible, then you should insert a time limit of, say, two years in which the publisher must exercise those rights or lose them.

She and Feist both agree that you should *not* give away dramatic adaptation rights. Period, full-stop. While it's unlikely that your novel will eventually become the basis for a hit Broadway musical, Feist points out that most people probably felt that way about T.S. Eliot's *Old Possum's Book of Practical Cats* back in 1939. Certainly no one guessed that that collection of poems would someday become the basis for Andrew Lloyd Webber's international hit musical *Cats* (whose promotional slogan is, appropriately enough, "Now and Forever"), or that Eliot's estate would today be the wealthiest of any deceased published author.

In addition, retain the rights to audio cassette recordings of your work, since this is such a fast-growing area in the USA, a society of commuters. Feist recommends regarding audio recordings of the work as a separate publishing venture: "If your publisher is going to bring about an audio adaptation of your work, let them negotiate that under a separate contract."

(9) Subsidiary Income

Jane Dystel recommends that all subsidiary rights income should flow through to the author after the initial advance has earned out, rather than the author having to wait for the semi-annual royalty period in which to receive monies due from those sales (monies which, after all, the publisher received in lump sums, unlike ordinary royalties).

(10) Hardcover Rights

Virginia Kidd recommends that if the publisher does not intend to publish a hardcover of the work, you

***Any clause
is important
if it matters
to the
author.***

should try to retain this right. You may get an opportunity to license a limited hardcover (first) edition to a small publisher. This has indeed proved a lucrative area for some science fiction and fantasy writers, though it has yet to make any impact in the romance genre.

BONUS POINT: Raymond Feist considers the following language to be the single most important thing you must insist on somewhere in any literary contract: "Any rights not expressly granted herein to the Publisher reside exclusively with the Author."

WHAT'S NOT WORTH YOUR TIME:

Most agents seem to agree that any clause in a contract is important if it matters enough to the author. Richard Curtis has known authors to leave a publisher over the publisher's refusal to negotiate enough free copies of the book into the contract. While this may seem trivial, Virginia Kidd mentions boosting the number of complimentary copies as an important contractual point to negotiate; it makes it easier (and cheaper) for you to exercise your UK, foreign language, and dramatic rights if you have plenty of copies of the book on hand (i.e. to use in submissions). Author Mary Jo Putney adds that additional copies are a valuable promotional tool for the author, who can then hand out the book to reviewers and booksellers who might be neglected by the publisher, but who can influence word-of-mouth sales.

While any improvement in a contract is worth getting, Russell Galen says there are contract issues which are overrated and which sometimes hold up deals for more time than the issue is worth—or which even kill a contract without gaining anything for the author. He advises that removing the *limited* basic option clause discussed earlier in this article is one such case. While the clause requires nothing of the author beyond giving the publisher the first look at his next work (remember: with the limited clause, you are free to reject the offer and move on), the publisher will nonetheless fight hard to retain this right, considering removal of this clause to be an outright declaration that, even while negotiating this contract, you're already planning to go elsewhere with your next book.

Richard Curtis says that fighting over the indemnity clause and competing works clause will seldom profit the author; not only are publishers extremely unlikely to budge on these issues, but the clauses will be too similar from house to house (when dealing with reputable publishers) to make moving to a new house over this particular issue feasible. He also adds that, regardless of what the bankruptcy clause says, if a publisher goes bankrupt, federal laws prevail, and your book can be tied up as an asset.

Other stipulations clearly depend on the author. For example, Kidd advises that trying to negotiate cover approval and an advertising budget into the contract are unlikely to be worth your time unless you're already

successful enough to have significant negotiating clout. Dystel, however, recommends at least securing cover *consultation*.

And while some authors have been able to convince their publishers that they're losing readers by using cheap paper and tiny type, Kidd suggests that trying to negotiate stipulations about the type of paper and type used in your book is also not worth your time.

ACKNOWLEDGMENTS:

The following people provided information for this article, either by direct response or through their writings:

Literary agents Russell Galen, Virginia Kidd, Jane Dystel, Liana Cassel (responding for Amy Berkower, who was out of town), Richard Curtis, Natasha Kern, and Mel Berger; authors Mary Jo Putney and Raymond E. Feist; and literary lawyer F. Robert Stein.

Laura's next book is Fever Dreams, a Denise Little Presents from Zebra in spring of '96, followed by a non-fiction account of her journey from the top to bottom of Africa.

At our 1993 conference in San Antonio, our special guest speakers Detectives Mauro Corvasce and Joe Paglino met our banquet speaker, Writers Digest Books President Bill Brohaugh. As a result of that meeting, the detectives contracted with Writers Digest to write a book which is now available as a Main Selection in the Writers Digest Book Club, *Modus Operandi: A Writer's Guide to How Criminals Work*. Ordering address is: Writers Digest Book Club—1507 Dana Avenue, Cincinnati OH 45207 or call 800-289-0963.

INTRODUCING...

The following authors have made application for membership in NINC and are now presented by the Membership Committee to the members. If no legitimate objections are lodged with the Membership Committee within 30 days of this NINC issue, these authors shall be accepted as members of NINC:

New Members

Patricia A. McCandless, St. Louis MO
Susan M. Anderson, Smethport PA

Those who must access the Internet at long distance telephone rates because there is no free "local" node in their area have already discovered how expensive that can be and that MCI, AT&T, and Sprint access charges are not uniform. Lois Kleinsasser reports possible ways to save long distance charges. One can call for 800 service, for a fee, or check into cellular phone rates. Some cell phone companies offer a flat \$10/month rate for weekend-only calls within a certain calling radius, and that radius is often wide enough to allow free access to an Internet node. The purchase of an interface to connect your computer to the cellular system will be necessary.

As a sidebar—without Judge Ito—99 new licenses for cellular services were recently sold by the FCC. The expectation is that the resulting competition will improve services and drive down prices until the rates for local cell calls will be as cheap or cheaper than those of local

telephone companies. Long distance rates should decline as well.

For free answers to your questions about getting around on the Internet, subscribe to *Newbie Newz*. To obtain the free electronic newsletter, e-mail newbienewz-request@io.com and include "subscribe newbienewz" in the text.

CompuServe has announced it will begin providing better Internet access, including better access to the World Wide Web. Three hours of Internet access will be included in the regular \$9.95 monthly fee, additional time at \$2.50/hour. Heavier users can buy 20 hours of access for \$15/month, in addition to the \$9.95 charge, with additional hours at \$1.95 each. CompuServe software will have to be purchased.



Calling All Editors

Your 1995 Novelists, Inc. committee is now compiling a list of editors to invite to this year's conference. Feedback from previous conferences tells us that editors are disappointed if authors don't seek them out at the conference to pitch books to them. Many authors want to pitch new ideas or expand into genres their current house doesn't handle. We'll try to help everyone out by (1) inviting more of a variety of editors to this year's conference than ever before, (2) concentrating on editors who are looking, and (3) leaving time on the schedule for you to meet with the editor of your choice. We'll publish a list of editors who have confirmed so that you can drop them a note or call ahead of time to set up a meeting if you wish. If there is a specific editor you would like us to invite, now's the time to let us know! All agents who have clients in NINC will automatically be invited.

We're now collecting tour information for those of you who will want to see historic Denver or venture into the mountains to see the Aspen turn to gold. Because of the plethora of activities available that weekend at our conference as well as the Rocky Mountain Book Festival at nearby Currigan Hall the same weekend, we'll give members wishing to take a sightseeing tour plenty of time to make their own arrangements.

The Warwick Hotel has a shuttle from the airport to get everyone to the hotel. You'll need to allow extra time to gawk at the stunning marble and the futuristic tram you'll ride from your gate to the main terminal and extra time to take the hotel shuttle from the high plains where DIA is located northeast of Denver to the downtown hotel. It will be worth the ride!

Please send your ideas for sessions, discussion groups, names of editors you'd like to invite, and anything else we haven't thought of to Kay Bergstrom, 1666 Clermont, Denver CO 80220-1153. Next month, we'll have details from the local distributor who will be arranging booksignings for those NINC members wishing to sign at the Book Festival.

— Patricia Werner

Each month features a new **POINT**. Agreements and disagreements—the **Counterpoint**—will be published two months later to allow everyone time to respond. **Points** are always published anonymously to allow members to bring up controversial issues related to the writing industry without concern.

"Miss Manners" for Authors

We need a Miss Manners for Authors to teach writer etiquette, not for the unpublished, but for us, the multi-published. Different chapters would, of course, deal with different occasions:

Booksignings:

1. Respect the physical space of those signing next to you by not overlapping your material. Balloons and other gimmicks should be avoided if they take up space in a tight situation.

2. Booksignings are not "friends and family" reunions. Children and friends may draw attention to you, and "isn't that sweet," but they distract from other professionals.

3. Don't ask a fellow booksigner to leave his/her designated place so you can take pictures, professional or "family."

4. Never reach across or interrupt an author/companion while they are in conversation with an interested reader.

5. Buying fellow signers' books is a personal decision, but try to do so if the other author needs a boost.

Conferences:

1. Don't interrupt a writer with an agent or editor, unless invited.

2. If you find yourself in a situation where another writer and editor/agent are doing business, find a nice way to excuse yourself.

Reviewers:

1. If possible, send thank-you's or call. They have donated their time for you.

2. If you have promo work which has reviewer's quotes on them, try to get the reviewer a sampler.

Time Management:

Don't be a time vampire in others' work periods.

All Occasions:

1. Promo work with other authors is **unnecessary**. A constant referral to how you handled whatever in the much-repeated title of your book is about as welcome as hives. There's a place for that, but not while other authors are chatting.

2. Don't dominate any situation. Give others a chance to speak. Ask other authors what they think.

3. Respect other professionals' time and concerns. Don't ask them to speak to booksellers on your behalf, unless the askee is dying to, then of course.

4. Don't interrupt an author conferring with a bookseller.

5. Try to pick up signals from other authors near you.

6. Quotes are tit for tat, otherwise, another "vampirism" of somebody else's time. Try to see if there is something you can do to replace their time used on your project.

Literary attorney
Elaine P. English has
relocated.

Her new address
and phone and fax
numbers are: 1825 I
St. NW, Suite 400,
Washington DC
20006; 202-429-
2086; fax 202-237-
2518.

ARE WE THERE YET?

Are We There Yet? features whatever in the publishing/bookselling business affects our income, working conditions, blood pressure, and/or mental health.

The new Harlequin/Silhouette/Mills & Boon unified contract includes an increase in the foreign sales royalty rates for retail sales in Great Britain, Canada, and Australia from 2% to 4%.

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DISPATCHES FROM THE FRONT

If They Only Knew...

By MARGARET MOORE WILKINS

We all get asked a variety of questions about our writing career over the years at conferences, booksignings, and social events, and sometimes I would

dearly love to say what I'm thinking, but I don't of course. For one thing, I'm Canadian. For another, it's hard to gauge whether today's interrogator might not be tomorrow's bestselling author. And as every author knows, it is better to be asked any one of the following questions than to be ignored. (Margaret's latest book is *The Saxon*, a current *Harlequin Historical*.)

Question	Answer	Real Answer
Are you still writing?	Yes	No, of course not. I found out I could make money at it, so I stopped.
Where do you get your ideas?	Imagination and research	What do you really want to hear, that I've sold my soul to the devil?
How much money do you make?	That depends on the book and the foreign sales. It can take years before all the royalties are paid out...	None of your business—but not nearly enough!
I keep looking, but I can never find your books.	They're only out for a month, so I can see how that can happen. My next one is due out (insert appropriate date).	They're all over the place—the mall, the grocery store, the drug store. If you don't want to buy one, fine. Just don't lie to me.
I can never remember your pen name.	Margaret Moore.	How hard can it be? The first name's the same; the second one starts with the same letter, for cryin' out loud. It's not as if I went for a Swahili translation or something! If you were really looking for my books, you'd twig when you saw it.
How's the writing going?	Fine.	Well, I think I've got the first couple of chapters down, but I'm worried that I've let one of the subplots lag, and maybe I've introduced too many new characters all at once, and....
I read your last book and I hated whatever. (This hasn't happened to me yet, happily, but I'm prepared.)	(with a tone of genuine concern) "Really? Why?" (after attentive listening) "I see." (short explanation) "I hope you like my next book better."	What? Are you insane? I loved that whatever. It was perfectly obvious why that happened. And listen, you, how 'bout you sit down and write something better, eh????
I loved your last book. When will the next one be out?	"Thank you!"	Bless you! May you live forever! May your tribe increase! Write my publisher! Tell my editor! Thank you, thank you, thank you!!!

Publishing Services by Sandy Huseby

Novelists' Ink

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