Variations in contracts among publishers

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Introduction

Research recently undertaken among over 1000 academic authors has shown many variations in the contracts offered by publishers. In this article I list and assess the more important sources of variation. The relevant conditions of the contract may be grouped into three broad categories: those relating to the obligations of the author, those relating to the obligations of the publisher, and those which do not fall clearly under either of these headings.

The obligations of the author

(1) To prepare the manuscript. Usually this simply means submitting a reasonably clean typescript, although some publishers who use a different production process require "camera-ready" copy, which means additional time or expense or both for the author. There may also be additional expense in preparing extra copies of the manuscript (two copies are most frequently required) and in preparing diagrams (some contracts specify that the author is responsible for part or all of the artist's costs). The preparation of an index is usually, but not always, at the author's expense.

(2) To deliver the manuscript by a given date. Different publishers allow different periods of time for writing—one author commented that an agreed six-month period put him under great pressure. Nevertheless, the deadline is usually subject to negotiation. Moreover, it appears that few publishers invoke their rights when the manuscript is not delivered on time.

(3) Not to exceed a certain number of words and diagrams. It seems entirely reasonable for maxima to be specified, but they are sometimes considered by the author to be too restrictive.

(4) To check proofs within a given time of receipt. The period allowed is invariably short, but the time differs according to the publisher.

(5) To bear the cost of author's alterations, other than printer's errors, above a certain percentage of the cost of typesetting. Variations are found in this percentage.

(6) To supply diagrams, photographs, and so on, "in a suitable form for reproduction." This condition is contained in some, but not all, contracts.

(7) To obtain, at his own expense, written permission to reproduce copyright material. The condition "at the author's expense" (and, we might add, trouble) is contained in some, but not all, contracts.

(8) To indemnify the publisher against the risks of libel (frequently extended to include the publishing of obscene material), and infringement of copyright. Such a condition is contained in almost all contracts, but there may be important differences in the wording of the relevant clauses.

The obligations of the publishers

(1) To publish the work at their own risk and expense, unless prevented by war, strikes, lockouts, or other circumstances

beyond their control. (If the publisher's failure to publish is not due to circumstances beyond their control, the author can sue for breach of contract.) In some contracts the obligation to publish is further qualified by being subject to approval or acceptance of the manuscript. (Under a contract offered to one author the publisher "retained the right to reject the work without compensating the author.") As has been pointed out by the Society of Authors, the effect of such a qualifying clause is to convert a firm contract into an unenforceable declaration of intent to publish. (It could also be a method of censorship.)

(2) The date of publication. Considerable variations exist here: in some contracts a date of publication, or a period after the delivery of the manuscript, is written in. Other contracts contain a phrase such as "as expeditiously as possible." Finally, other contracts make no reference to the date of publication.

Delays in publication can cause great irritation. One author in our sample wrote in 1977: "After having the book firmly accepted in May 1973 (and advance royalties paid), the publisher has done nothing yet about publishing the book—although the contract indicates that they would do so within a year of acceptance. A short correspondence took place early this year, but mostly my letters are ignored." Other authors mentioned delays of up to four or five years.

(3) The price of the book. An approximate price is sometimes specified, but more often the publisher reserves complete discretion on this matter. Numerous authors said that they thought that academic books were too expensive. This feeling might reflect a belief that lower prices would lead to increased revenue and hence in author's royalties. Alternatively, it might reflect the author's ideology. One author commented, "The only point of writing a book at present is to advance one's career prospects—this applies particularly to advanced monographs. The financial reward is ludicrous, especially if one includes the tax deduction. The original aim of helping to educate new scientists in my case has been destroyed by the publisher fixing the market by price. The author needs more power to control this ludicrous situation."

(4) The form of production, advertising, and distribution. It is very unusual for a publisher to accept any specific obligations in these matters, and variations occur mainly in the implementation of policy rather than in the terms of the contract. Nevertheless, clearly considerable variations in implementation exist, as illustrated by the following comment: "Each of the publishers I have used had different advantages. Q produced a beautifully made book, and are now going into a second edition without my asking. They have been very helpful, and published the first edition quickly. R produced my book in paperback at a reasonable price, and had excellent artwork done. S also produced a fine quality product and marketed it extremely well. T were dreadful, perhaps partly owing to their reorganisational problems. There was no one in their offices uniquely responsible for its production. My queries often went unanswered. I was not consulted about the cover, which is *identical* to that of another book in the same series on the same subject. And I have never seen it advertised. Also, although I am told their representatives check the stocks of bookshops and advise on what is needed, most shops I go into do not have it in, even the ones where my students buy their books. Never again."

(5) The payment of royalties. Of the total number of conditions in contracts that had caused concern to the authors who co-operated in our research, no less than 29% related to royalties. Most of these—18%—related to the basic royalty rate, and 11% to the various subsidiary rates. Consequently, we consider the basic rate first and the subsidiary rates subsequently.

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(a)—The authors were asked to indicate which of seven alternative rates denoted most accurately the rate payable on their latest published book. Some 1056 authors answered this question and, as can be seen from the summary (table I), considerable variations were found.

TABLE I—Royalty rates

Rate (% of published price)	Respondents (%)
7½-10	24.7
10-12½	44.5
10-15	15.8
12½-15	4.5
12½-15 +	1.6
Flat fee	4.4
Profit-sharing contract	1.1
Others	3.3

(b)—Where, as frequently happens, the basic rate incorporates a sliding scale, variations occur in the breakpoint. To refer briefly to my own experience, one publisher had a breakpoint at sales of 2500 and again at 5000, while other publishers had (single) breakpoints at sales of 3500, 5000 (two publishers), 6000, and 7500.

(c)—Where the basic rate incorporates a sliding scale, and sales have been sufficient to move the author to a higher rate, this higher rate may be maintained when the book goes into a second or subsequent edition; alternatively, the rate may revert to its initial, lower, level. (A midway position is where reversion to the initial rate occurs when extensive typesetting is required.)

(d)—It is usual, but not universal, for royalties on overseas sales to be less than the basic rate applying to UK sales. Nevertheless, there are many variations in overseas royalties, even where domestic royalty rates are identical. Differences may relate both to the rate and to the base to which that rate applies (overseas published price, UK price, or publisher's net receipts).

(e)—When a book is published in both hardback and softback, a lower royalty rate is invariably paid on the latter. But, again, variations occur in the relation between the two.

(f)—Variations also occur in the royalties paid in respect of other subsidiary rights, including the rights to translation and publication in a foreign language, to sound and video recording, to quotation, and so on.

(g)—Finally, considerable variations were found in respect of both the amount and the timing of advance royalties.

Miscellaneous conditions

(1) Publication outside the UK. Many (but not all) contracts extend the rights of the publisher to other English-speaking countries; less frequently, the rights are extended to all other countries.

(2) The author is usually asked to agree not to publish a competing work. It seems reasonable that the publisher should seek to protect himself in this way. Since the author is in effect agreeing to a curtailment of his rights, however, it may be important to inquire precisely how the publisher would exercise his rights. In this context my experience might again be of interest.

On one occasion negotiations with one publisher were at an advanced stage when a contract from a second publisher arrived. Although the books were aimed at quite different markets, one being more "academic" than the other, it seemed that there might be a limited amount of common material. Consequently, I felt that I should ensure that signing the contract for the first book would not prevent me from writing the second. The publisher was happy to reassure me on this point. On another occasion I was asked by a publisher to write a book as part of a series. Although I was willing to do so, I felt that the terms of the contract might prevent me from writing another book which I was better qualified to write. Again, the publisher was

happy to allow this. Indeed, they offered to publish the second book—an offer that I accepted.

(3) Contracts frequently specify that the publisher should have an option on the author's future work (usually the next book, but sometimes later ones too). It seems unfair that an author should be asked to tie himself to a publisher at a time when his experience with that publisher may be very limited. In fact, 22% of the contract conditions causing concern to authors related to this point, although many authors said that they had found no difficulty in having the relevant clause deleted.

(4) The termination of the contract. Variations exist in both the conditions under which each side to the contract can enforce termination and to their respective rights after termination.

Importance of variations in contracts

In that part of my research concerned with the attitudes and experiences of authors, I have obtained a large amount of information concerning variations in contracts, but the primary aim of my research has not been to assess these variations. Consequently, the following conclusions are to some extent speculative.

Just over a quarter of those answering the question about contracts in my questionnaire—272 authors—said that they felt some disquiet concerning the contract for their last book. The relationship between author and publisher is more likely to be adversely affected if the author feels that the relevant condition is specific to that publisher than if he feels that it is general to all publishers, and is part of the "rules of the game." In fact, just over half of the respondents felt that the conditions were general, 19% that they were specific, 11% (who mentioned more than one condition) that they were both general and specific, while 19% did not know. This would suggest that about 30% of the authors who were concerned about their contracts, or some 7-8% of the total sample, might have accepted the contract with a bad grace and might look to another publisher for their next book.

Further light is thrown on the relative importance of variations in contracts by the answers to two other questions. Authors were asked if there were any publishers whom they would *not* like to publish their next book: a total 407 gave the reasons listed in table II. Given the fact that most answers are classified under "other" it is difficult to draw many clear conclusions from the table. Nevertheless, we can see that many factors, other than the contract terms, give rise to unfavourable attitudes towards particular publishers.

TABLE II—Reasons for non-preference of publisher

Reason	Mentions (%)
Incompetence	19
Poor promotion/publicity	12
Books too expensive	4
Dishonest/untrustworthy/broke contract	4
Other (censorship, early remaindered, refusal to update, profit motive too strong, bad product, etc)	61

A wide range of factors was also mentioned in response to an open-ended question. Moreover, this question indicated that the importance attached to any particular factor depends on the personality and motivation of the individual author. The following quotations speak for themselves:

"The main problem is that publishers keep asking me to write books which they want to sell, rather than offering to publish the books that I want to write. At present I am accepting no money in order to get an obscure book published."

"My choice of X for my third book was dictated by the hope that they could market it in a worldwide way. Y were

hopeless in this respect. Also, the X book was beautifully produced, and we chose the typeface. Financially, the exercise is a non-starter for my kind of book. Financial terms are irrelevant."

"Quality of editorial advice, friendliness etc, varies enormously from the quality of A, though the friendliness of B, to the self-interest of C. Since publishing concerns much author-editor collaboration the nature of the working arrangement is very important."

"I do not write a book to make money but to boost my ego. So I want a publisher who will produce the book well at a sensible price, and then sell it."

It appears then that variations in contracts are one of many factors which influence author-publisher relations. Moreover, the importance attached to any particular factor may vary from author to author. Despite this multiplicity of variables, however, it appears that some publishers have a much better reputation with authors than others. This may be seen by comparing the

percentage of "mentions" accounted for by a given publisher in response to the questions, "Which publishers would you most wish to publish your next book?" and "Which publishers would you not wish to publish your next book?" Data relating to a selection of publishers are presented in Table III. Overall, attitudes are favourable towards publishers A, B, and C; neutral towards D and E; and unfavourable towards F and G.

TABLE III—Most and least preferred publishers: selected publishers (percentage of total mentions)

Publisher	Most preferred publishers	Least preferred publishers
A	9.2	3.4
B	8.2	3.2
C	4.4	0.5
D	6.7	6.6
E	1.4	1.0
F	0.3	4.2
G	2.2	8.6

The economics of publishing

DAVID DICKENS

I have been a publisher for 30 years, and managing director of a medical publishing company, and of a company concerned with higher education, for 24 of those years. I shall discuss the problems of all authors and all publishers, and, in that sense, I officially represent the Medical Group of the Publishers Association, and through them, the Publishers Association itself.

The Publishers Association is a forum in which publishers may meet to discuss and debate; it is a trade association and is not allowed by law to take collective action. It must not lay down any terms and conditions whatever. It may advise, for instance, on publishing contracts but it must not enforce. There is no effective standard contract. Any publisher is at liberty to propose any contract, and every author is at liberty to agree or disagree.

Printed contracts are mainly for convenience, because we do not want to have them typed every time. The economics of publishing are much the same for every book, the laws of copyright are the same. Most of the clauses are there because they have evolved from experience—often sad experience. I find that literary agents accept the usual sort of contract without demur—and literary agents are the authors' watchdogs.

Some of the matters being discussed at the Publishers Association at present are: closer liaison with academic librarians; copyright within the EEC; piracy in Singapore; a parliamentary lobby for tax relief on book purchases (we shall be asking the BMA to join us); evidence to the Wolfenden Committee on photocopying; and seeking counsel's advice on author's and publisher's liability. All these things are of potential benefit to authors, and things that SOMA and we could usefully discuss.

The economics of publishing are complicated and depend on a supply of money, but publishing is not only about economics. Publishing is many things and needs many skills: literary; editorial; aesthetic; technical; salesmanship; and economic. I

became a publisher because I was interested in the first five of these, and not interested at all in the last; but I have learnt that first and foremost I have to be a master of economics.

Few medical books have mass audiences. For most the market is between 1500 and 5000 copies. The subjects are diverse and complicated, and the information rapidly becomes dated. Some are good books but do not find the market; others are published at the wrong time. Some are competent, and some are downright bad. To get the necessary money I can ask my shareholders, or I can ask the bank for it. In either case I will have to account for my use of the money.

To give an example: my literary and editorial skills have prompted me to publish a specialised postgraduate book; it is to be crown 4to, 400 pages, with some pictures; I assess the market as 3000 copies. My printer tells me that it will cost £7200 to produce. By simple arithmetic this means that the cost of each copy is £2.40. Now I have to decide how to price it. Both the *Times Higher Education Supplement* (29 October 1976), in an article based on the findings of the Library Management Research Unit at Loughborough University, and the recent survey of the Price Commission on *Prices, Costs and Margins in the Publishing, Printing and Binding, and Distribution of Books* took as a model a five-times factor for calculating price. But, of course, it is no use pricing a book above what the market is prepared to pay.

Pricing by such a rigid factor assumes that the whole print-run will be sold. If it is not, then all our precious paper economics are useless. If, however, the book should be successful, and reprint, then our paper economics change again. Sometimes a publisher may choose—where he wishes to establish a certain book—to price it over several assumed printings to spread the cost and keep the price down so that a student can afford it. This is a gamble. The reward would be to achieve a large continuing sale over several years which, while it did not make much profit, would at least generate cash to run the business with. A great temptation is for a publisher to print more than he thinks he can sell. His unit cost comes down, but he is left with a warehouse full of books. More publishers have gone bankrupt for this reason than for any other.

So, we have a unit cost of £2.40 and we multiply it by five,