

Single Speech  
at the Meeting  
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During my brief appearance on this panel this morning, I will try to isolate and define and I will comment on some of what I consider to be the foremost considerations and the most difficult problems of the author-publisher contractual relationship.

I would like you to take particular notice that I was especially negligent in preparing for this assignment. Somehow I failed to realize, until it was too late, that the first step, tried and true, in preparing for a thing of this kind is to send out a questionnaire. I have a feeling, however, that this negligence may have earned the gratitude of all of you.

Be that as it may, I come to my task this morning lacking the information of modern industry practices that a careful survey of current author-publisher contractual policy might have given me. I now find it necessary to resort to my own imperfect experience and whatever insecure philosophy my experience has led me to develop on the matter.

But perhaps my comments will, even so, serve their main purpose --- and that is to set the stage for further discussion, in this meeting this morning, of the contractual phase or responsibility of the author-publisher relationship.

Now . . . in three brief statements . . . I want to try to convey to you my own conception of what the author-publisher relationship ought to be.

The first statement is simply this: I believe that a good book is the product of a successful partnership. Here the key word is "partnership". No other relationship will do -- such as putting the author in the position of client, or adversary, or customer. There are two parties --- the author and the publisher --- whose contributions are equally vital, and whose allegiance to the book and responsibility for its success are in the nature and spirit of partnership.

Second: A successful partnership of author and publisher, in the beginning, is the outgrowth of mutual trust and the product of a careful division of authority and responsibility.

Third: A successful author-publisher partnership, in its maturity is the product of expert performance, by both parties, of their separate and of their cooperative authority and responsibility.

The significant thought in these three statements is that a careful division of authority and responsibility is all-important to the success of the publishing partnership. Without it, mutual trust will die, friendly cooperation becomes impossible, performance of authority and responsibility is seriously impaired.

Very early in the life of the partnership, frequently even before the book is written, the author and the publisher must sit down together --- and together they must identify the responsibilities and decide who is going to do what. They know or they will find that the responsibilities will fall quite logically into three categories.

One category will contain the responsibilities that must be assigned to the author; another those that must be assigned to the publisher; and a third those which can be handled best by the author and the publisher in cooperation.

First, let's consider some of the responsibilities that belong to the author, either because they are clearly his responsibilities or because he is better qualified than the publisher to handle them:

(1) It is the author's responsibility to write the book, of course, including necessary drawings, photographs, charts, and other materials in clear form suitable for reproduction. All of these things must be done by him or directly under his supervision. Who pays for them is a matter for negotiation between him and his publisher, but this, too, should be settled at the time a contract is drawn.

(2) Because there is no-one who knows the manuscript better than the author, it is his responsibility to assure the publisher that he is the sole author, except for those portions shown to be quotations; that he has secured permission to make all quotations; that his book has not been previously published, in whole or in part, except as he has told the publisher; that he has not included any statement known to be false, or libelous, or in any other way unlawful.

(3) It is the author's responsibility to take all these warranties seriously, and he must be prepared to stand back of them to the full extent of his energies, his ability, and his financial resources. He may be required to do so.

However, the publisher must not permit these warranties of the author to give him a false sense of security. If there is a suit for libel -- and I think this is also true if the suit is for violation of copyright or any other proprietary right -- all parties to the offense -- the author, the publisher, and sometimes even the printer --- can be sued, collectively or individually. Under the contract, the author will be legally responsible for all such expenses. But, if he can't pay, the publisher will have to.

(4) The author must commit himself to reimburse the publisher for the cost of excessive alterations in proofs. But together, the author and the publisher will have to agree on a definition of what are excessive alterations. Is it to be all alterations? Or only those in excess of a specified allowance.

I would like to pause for a comment here --- perhaps a minority opinion on a controversial subject. I am not quite so convinced as are some of my colleagues that authors' alterations always, or even frequently, comprise an evil. I wonder if we can, or should, deny the author the right to change his mind. We, ourselves, do it frequently, in matters of design, title, production specifications. Ask the printer. And can we, for our own good as well as the author's, deprive him of the right freely to include new material that has come to light during the months of editing and typesetting? In my opinion, and in the best interests of the book, the author

both deserves and needs the 5%, or 10%, or sometimes even 15% leeway that has been general practice for several centuries of book publishing history.

Alterations are all too often needless, to be sure --- and these we must discourage to the utmost of our permissive powers. On the other hand, there are good and necessary author's alterations. They are a fact of the life we lead, they can be a legitimate cost of publishing, and we should learn to live with them.

(5) The author should make the index --- especially for the technical or scholarly book. He is the best man for the job.

(6) The author should be willing to agree not to give another publisher a manuscript of competing character during the continuance of his contract.

I have not attempted to be definite in this summary of the author's responsibilities --- or of those of the publisher. In the ten minutes allotted to me on this panel, this would be impossible.

I would like to move on quickly to a summary of the responsibilities that belong to the publisher and which should comprise a part of the contractual relationship:

(1) First, the publisher must obligate himself to publish the manuscript --- and within a reasonable period of time.

Generally speaking, the quicker the publication the better. The author will be happier, the bill for alterations will be smaller, the information will be fresher, and, who knows, you may beat a competitor to publication date. However, the publisher and the author, together, have got to decide how much time the publication process is going to take.

(2) The publisher should obligate himself to pay royalties, if that is possible within the boundaries set by cost and income relationships. It is my own feeling that every contract ought to call for payment of royalties. Whenever possible, royalties should be paid from the start. In other cases, it should be specified that royalties will be paid after the sale of 1,000 copies, or 2,000 or 3,000 --- or whenever the publisher has recovered his own expense.

(3) The publisher must commit himself to a schedule of reporting sales and paying royalties and other amounts due the author.

(4) The publisher should give the author some free copies. How many copies doesn't seem to me to be very important to the publisher. If it is important to the author, it costs very little to be generous, within limits. Whether the number is 6 copies (approximate inventory cost, \$12.), or 10 copies (cost, \$20), or 20 copies (cost, \$40) is not really very important.

(5) The publisher should accept the responsibility to copyright the book, either in the publisher's or the author's name as is mutually agreed.

(6) One of the most important responsibilities of the publisher, and one which must be assigned clearly and exclusively to him, is that of advertising, promoting, and selling the book --- "at such price, upon such terms, in such countries, and in such manner, through contractors, jobbers, agents, sub-agents, or otherwise, as may seem best to the publisher." It should be made crystal clear that the author is not to do any of these things himself.

Finally, there are a few matters which don't quite fall to the clear responsibility of either author or publisher. On these matters there must be some kind of mutual agreement and responsibility:

(1) It is important that the author and publisher decide who is going to handle the sale of subsidiary rights --- such as first and second serial, digest, reprint, television, movies, etc. --- and how the receipts will be divided. Frequently, of course, the author's literary agent will handle all these things and the publisher will find himself in the position of struggling with the agent to get his reasonable share of the receipts from subsidiary rights.

(2) There must be mutual agreement on the right to publish new editions and on the author's responsibility to provide new

material and keep the book up to date. On some books this is not important; on others, especially textbooks, it may well mean the life or untimely death of the book.

(3) There should be mutual agreement on termination of the contract and dissolution of the partnership, and disposal of the property consisting of bound and unbound stock, plates, and other materials. This should be made as clear as possible. I like to reserve to the publisher the option of discontinuing publication and terminating the contract but only if and when annual sales drop below a specified number of copies, say 50 copies on scholarly books.

In closing, I would like to contribute three observations about author-publisher contracts:

First, every book should be covered by a contract, carefully reporting the mutual agreement of the author and the publisher as to division of authority and responsibility. It is vital to good business and preservation of author-publisher friendship.

Second, the publisher will lose nothing, and he will gain the confidence of the author and save time in negotiation if he will discuss with the author, openly and frankly and honestly, all the financial relationships and problems. He should show the author the probable budget for the book, showing estimates of gross sales, the cost of royalties, and how all these

considerations affect price, royalties, luxury of design, size of edition, and so forth. Because the publisher will be investing his money, he will reserve to himself the strength of final decision, but he will have given the author every opportunity to understand his problems.

Third, a contract is a good one if you rarely or never find reason to refer to it. The important considerations are mutual trust, a careful division of authority and responsibility, and expert performance, by both parties, of their separate and of their cooperative responsibilities.