

Authors' Contracts

An event held by the British Literary and Artistic Copyright Association (BLACA) on 12th January 2017 in London

Despite the common cry from authors' unions around the world that publishing contracts are not fair on authors, the way that different countries deal with the problem is markedly different. British, French and German representatives of authors gathered at a BLACA event to swap stories on this very subject in January. Balancing out the picture were European Copyright expert, Brigitte Lindner, talking about how the European Commission is trying to deal with this sticky situation, and a publisher himself – David Shelley, Chief Executive of the UK subsidiary of Hachette, Little Brown – and we might get something close to a balanced picture.

Unfair contracts translate to low earnings for authors, and even worse, restrict them from finding sources of income from elsewhere. This is the conclusion of FUIS's recently released survey of 1,000 authors, where only 37.8% of the 1,000 authors surveyed were able to work full time as an author. Authors' earnings in the UK too are in a "dire" state according to [UK Society of Authors' \(UK SoA\)](#) Chief Executive Nicola Solomon.

What's more, in spite of low royalty rates and advances becoming rarer (advances are paid to writers to live on while they write the book, so that they or the publisher can sell it), publishers want more out of writers, often expecting them to publicise the books and offering very little support.

Contracts increasingly ask for all rights from authors, including taking away the 'options' that the author has to make money from her work, such as turning the book into a film. With the shelf life of books shorter than ever, so is the time for the book to make money for the author. So authors have to focus on quantity rather than quality to try and make a living. Studies show that the more rights the author keeps, the more money they make from their books, implying that the fewer rights they keep, the less money they make.

The publisher's explanation for this was that the publishing industry as a whole is struggling, and that overall, authors are getting more than they were previously. However, this isn't being equally distributed, but more is being paid to bestsellers, such as *Fifty Shades of Grey* writer E.L. James - the few are getting the majority of the money. He sympathised, he said, with authors' plight, saying the reason that publishers can't now take risks on midlist authors but have to put everything into the celebrities of the writing world, is that publishers' routes to market have been limited by reduced shelf-space (fewer book shops) and the likes of amazon piling high, selling cheap, and offering self-publishing services, which cuts the publisher out altogether. However, publishers are doing a good job of creating their own rival global conglomerates, with big publishers swallowing up small ones.

In France, the [Société des Gens de Lettres \(SGDL\)](#), represented by Maia Bensimon, has been hard at work making the case to publishers to treat authors more fairly in their contracts. They have made good progress, even to the point of securing protective legislation to benefit authors. Victor Hugo and other legendary French authors started SGDL in 1838 because authors weren't getting paid for the use of their books. When the digital world arrived, the standard contract hadn't moved for many years, and SGDL had a difficult time persuading French publishers that it needed to. However, once one door opened, SGDL just kept pushing and aim to carry on doing so until all issues are addressed. New copyright contract law was introduced to the French Intellectual Property Code in 2014, addressing publishing in the digital age. Publishing contracts in France can be voided unless they comply. This contrasts with the UK, where there are no statutory provisions at all in the UK Copyright Act. Rather, the principles of 'freedom of contract' apply. This means freedom to negotiate for both sides, which often means that authors, as the weaker party, do little or no negotiating, making it a very publisher-positive bargain.

To take on this negotiation themselves though, authors need to be armed with knowledge about their rights and their bargaining power. SGDL is intent on teaching authors which kinds of rights they should and should not transfer. The UK SoA has embarked on a similar awareness-raising initiative, and launched the 'CREATOR' principles, which indicate the general principles authors should follow to ensure any contract they sign is fair to them. The effort to provide this kind of information for authors in all countries, including those with less active unions, is being undertaken by the International Authors Forum (IAF), a network of 60 unions of writers and artists all over the world, whose '[10 Principles for Fair Contracts](#)' are available in French, Spanish, Italian and English.

As a tool to give author and publisher the best chance at reaching a good deal, standard contracts can be useful. They set out a template contract with minimum terms and act as a neutral starting point for negotiations. Gerlinde Schermer-Rauwolf, representing the [German Writers' Union \(Verband deutscher Schriftsteller\)](#), who is also Vice-president of the European Writers Council, reported that there is a standard contract in Germany agreed between the German Writers' Union and Publishers' Association. Until recently, it hadn't been updated since 1972. A new contract law was implemented in Germany at the end of last year, with more remuneration rules aiming to improve the income of authors. As in France, there are fairly extensive provisions protecting authors in publishing contracts, contained in Germany's written law, the Civil Code.

The amount of work authors' unions in the UK, Germany and France are doing to improve contract terms for authors show clearly what an important part of authors' economic livelihoods contracts are, and that authors need to be aware of what they are agreeing to when they sign any contract. And to stand up for themselves and their fellow authors to ensure they get a fair deal.

Can EU Law help authors achieve contracts from which they can make more money, or are market forces simply against them?

In view of the draft Directive on Copyright in the Digital Single Market released on 14th September 2016, Brigitte Lindner gave an overview of the regulatory framework of authors' contracts in the EU, pointing out that there was no harmonisation of contract law at the EU level. There are references to contracts from time to time in the various Copyright Directives, but because of the differences between countries – culturally, legally and in their approach to contracts, there can be no common contract law.

In the recently published proposals for Copyright as part of the European Commission's Digital Single Market strategy, tools would be given to authors to potentially increase their remuneration and make it easier for authors and performers to use their rights. On a national level, all EU Member States have a commitment to contractual freedom, but what they do additionally in terms of authors' contracts and remuneration levels varies, as we learned from the UK, German and French examples given. This applies to factors such as formalities, moral rights (and waivers of), granting rights in future works, purpose transfers, bestseller clauses and under what circumstances a contract can be voided. The book market in different countries of course affects each country's authors differently, including import and export levels. Some countries are more protective of books written in their language, especially if that language is not widely spoken internationally. Cultural practices, such as what happens to proceeds from books sold in charity shops, levels of piracy, how Amazon is affecting where people discover books and booksellers, and who does the publishing (especially now self-publishing is possible), digitisation and globalisation, all have consequences too, meaning that the regulation of contracts across the EU is a complex matter, where uniformity is not easily possible or necessarily desirable. The number of active (or activist) stakeholders, which include libraries, internet 'users' (who are also responsible for sharing, mixing and generating new content), and big global digital platforms like Google and Amazon are all vying for a portion of the income from creative content, (or want to access it for free), which means that income is ever-diminishing. All of which erodes the amount the creator can earn as originator of content.

The publisher, David Shelley, pointed out that while reading is thriving, publishing is not. This this does not bode well for authors using conventional publishing models. Diversification and entrepreneurialism through self-publishing are, in the eyes of some, giving authors much better prospects, although perhaps require a very different approach to the profession.

Where publishing contracts are still necessary though, laying down and being vocal about principles that ensure authors are remembered, and given fair treatment in the publishing of their books, is essential.