



Selling Rights at Frankfurt

The New Zealand Society of Authors (PEN NZ Inc.)

Types of Contracts

There are basically three types of contract:

- Rights and Co-edition sales
- Distribution Agreements
- Single – Publisher Agent

Rights and Co-edition sales – A basic sale of rights is the most likely type of contract you will be negotiating. Make sure you specify what you are selling and what you are not selling. If it is a translation right you are selling remember you can always apply to the NZ Translation Grant Scheme

http://publishers.org.nz/index.php?option=com_content&view=article&id=193&Itemid=53

What controls will you have over the editorial work on the new edition and what illustrative material do they want (especially the cover).

Be careful with a co-edition if you are responsible for providing the product which could involve costs incurred as with a distribution agreement (see below).

Make sure you have systems in place to track sales, chase royalties and follow-up when the license period expires.

Distribution Agreements – we recommend you only go for this if you can't sell anything. This agreement means that you provide the product – you produce the book and ship it to the publisher overseas. It involves quoting on transport (ex-works, to port or cost, insurance and freight). These costs can erode your profit margins and be problematic. Avoid quoting costs to the licensee's warehouse and avoid transport by airfreight. The less risk you have to take the better.

Single Publisher – this is where you strike a deal with a publisher for all your titles. The overall contract will cover the business relationship and how you will work together with each title dealt with in a separate agreement.

Responding to Interest

The value of a rights agreement will vary from country to country. It is advisable to enter into negotiations with clear goals – know what you want beforehand. Our advice is – sell what you can – go for a straight rights sale. Next best option is a co-edition. Only go for a distribution agreement if you can't sell. Everyone is looking for reasons why not to buy. There are too many books at the Fair and not enough interested buyers – we must do everything we can to convince them to buy and we can only do that with your help and input.

You will be responsible for negotiating your own contracts – this document is designed to offer some help with this.

Negotiating

Things to consider:

- Establish what type of agreement are they interested in (co-edition, licensing, rights sale, distribution etc.).
- Be sure that you specify the language and territory granted. Watch for:
 - **Spanish rights** – try to limit the scope to specific geographic locations as the Spanish language covers around 2/3 of the world and you could give away rights to areas you are not aware of. If they want other areas ask what representation they have in those areas.
 - **China** – limit to mainland China if you can – Hong Kong has a higher literacy rate and if you can sell separate rights to a Hong-Kong based publisher you are likely to get more money. Specify the language granted – a Chinese publisher could publish editions with traditional characters, simplified and pinyin if your agreement is not clear. If all Chinese languages are sold then ask for more money.
 - **French** – specify the area granted – French Canada is a big enough market to negotiate separately if you can.
 - **Portuguese** – is also a language that could be split up for maximum profit.
- If there is external copyright material involved, have you cleared the rights for this territory? This includes text quoted from previously published sources; illustrations and photographs; fonts if a proprietary font has been used.
- What is the duration of the license? And is the license asking for additional rights?
- Generally the originating publisher (ie you) will specify payment in their own currency. Try if you can to use New Zealand dollars. Make sure you confirm this at the early stages of negotiation. With some publishers this will be ok, but other bigger publishers may want to do the deal in their currency. Make sure you state how long the prices quoted and agreed on will remain valid to avoid being caught by currency fluctuations.
- Ask for contracts to be in English.
- Make sure that the local publisher is responsible for all marketing costs in their market. You don't want to find that you are suddenly responsible for paying for their marketing campaigns.
- Exclusive or non-exclusive – exclusive licenses command higher royalties. Depending on the level of interest you might make more money granting non-exclusive licenses to multiple parties. Non-exclusive deals are more likely to be with smaller, elite publishers. Specific rights (such as book club rights) may be divided up in any one territory. If asked for an exclusive license consider
 - Can the publisher service the area – depending on the language rights and their ability to distribute

Royalties

Royalty rates vary by geography:

- Asia – begins at 6%
- Japan can be as high as 10%
- Latin America starts at 8%
- Europe varies – 7%-9%
- Translation licences could vary from 5% (for some children's books) to 7.5% for a novel or academic title.
- English language royalties are likely to be higher than rates for translation licenses – translations will incur editorial and translation costs.

NOTE – percentages are generally of Price Received – but if you can get it of RRP – great.

Rates are negotiated on a contracted print run. If the book does well and goes into reprint make sure you have provision for a higher royalty rate.

Make sure you establish what percentage of the print run is likely to be caught by discounted rates (for books into supermarkets etc.). Try and get a de-escalator clause that protects your royalties if you can.

Advance Payments

Some smaller publishers may find it difficult to pay an advance due to cash flow problems and may therefore seek to offer a higher royalty rate to compensate for this. This may sound good but if the book doesn't do well, or even fails to appear, you are left with nothing. Try and get some sort of advance as a sign of good faith

The basic guideline is:

- The number of copies set for the first printing x estimated retail price = gross revenue. This is multiplied by the royalty percentage to get a figure for the advance.

Going for a bigger print run is not necessarily the best option – the last thing you want is hundreds of books being pulped.

Duration of Licence

Unless specified it is assumed that the license will be for the full term of copyright.

The duration of the licence is subject to negotiation. Contracts will generally be for 5 years with a provision for renewal, subject to renegotiation of financial terms.

Digital

Should you also sell ebook rights? It is likely that this will be expected. Arguably smaller markets have less of a business case for retaining digital rights, and some growth in ebooks is global. Larger publishers can easily service international sales at little cost.

NOTE: Territorial rights are under pressure in the digital age.

What can go wrong?

Deferred payments that never get paid – negotiate a lump sum for a specified print run, payable in three instalments – 1/3 on signature and two other payments scheduled later (eg on printing).

Request copies of a translated work – if possible check that the translated text doesn't alter your original work.

And finally -

Think – if you were in their position what would you want?

This is about developing business relationships and long-term deals with overseas publishers.

Follow-up after you have signed the contract.

This is the beginning – not the end.

Our thanks to the Publishers Association of New Zealand for helping with this document.