

# Contracts 101

When it comes to building relationships with contributing writers, photographers, illustrators and other providers of content, a bit of legal knowhow is essential.

Let's be honest: most people in publishing don't have a lot of legal training, and more than a few of us get uncomfortable at the very idea of having to endure it. But when it comes to building relationships with contributing writers, photographers, illustrators and other providers of content, a bit of legal knowhow is essential. Establishing the terms of those relationships at the outset with a formal legal contract can prevent all sorts of misunderstandings later on — and potentially save you a bundle.

Freelance contracts can range in scale and scope, but at their heart they're all about the same thing: establishing the rights and responsibilities of the two parties involved in them. For publishers (and the editors and art directors who work for them) that means establishing which rights are being purchased, the terms upon which the content is expected to be delivered, and the options for both parties if those terms aren't upheld.

## EMPLOYEES VS. CONTRACTORS

Using freelance contracts can be a bit of a bureaucratic hassle, and if you're not using them already they might seem like an imposition on the relationships you already have with contributors. But the hassles involved with not using them can be much bigger — including, for example, the prospect of getting sued for copyright infringement. In the absence of a contract with your freelance contributors, you don't legally have the right to repurpose the content they've created. Vancouver lawyer Denis Walz says, "If they're an employee and they're creating something in the course of their employment, then the employer acquires the copyright interest in it. But if they're an independent contractor, then the copyright stays with the holder. And if they haven't acquired the rights, they can't go on to use it for anything else. Copyright assignment has to be in writing — they wouldn't have the right to use it for any other purpose." In other words, get in writing — no matter how much of a hassle it might be.

## THE RIGHTS

The trend of late has been away from single-use arrangements and towards the acquisition by publishers of as many rights as possible, in as many forms as can be reasonably justified — and often a few that can't. According to Walz, that's largely a self-defence mechanism, a response to the dizzying changes that have washed over the print media business over the last two decades. "They want to acquire the rights to reproduce the material in perpetuity, and in all media now known or hereafter developed or devised."

Those terms, of course, have created some pushback from content creators, who would understandably like to be able to repurpose their work in as many ways — and for as much money — as possible. Outlining the terms at the outset ensures everyone has a clear understanding of use.

In the case of custom content (advertorials or bylined work for custom magazines) rights are usually purchased outright, often with the copyright going to the third party who has paid for the publication.

Publishers should understand that it is their responsibility to obtain rights through proper channels for any material they run in their magazine, particularly if they suspect the content was originally commissioned or paid for by another publication. Violation of another publisher's copyright can lead to costly legal fees or compliance with other terms. They should also have strong contracts in place and process for obtaining permission for use when requested by another party.

# Contracts 101

## THE KILL FEE

The key to a successful assignment, whether it's an illustration, a photo shoot, or a long-form feature, is a detailed explanation up front of what the assigning editor or art director expects to see when it's submitted. The better those expectations are communicated up front, the less likely it is that they'll be missed in the end. But it's important to retain the right to kill something if it doesn't meet your standards, and that's where the kill fee comes in. The terms here are variable, but they generally involve a payment of some fraction of the originally assigned rate and the relinquishment of any rights to the content. More important is the clarification of the conditions under which the publisher has the right to exercise the kill fee — and under which ones they don't. What you decide to offer as a kill fee is entirely up to you.

## THE PAYMENT TERMS

These are the terms upon which you, as publisher, promise to deliver payment once the content in question has been accepted. You can also, if you like, insert language here around supplemental payment for work that exceeds the assigned length (if mutually agreed upon by both the assigning editor and writer) or original scope (in the case of visual work), although these can also be negotiated on a case-by-case basis. For publishers, though, this can be a double-edged sword — if you specify that payment will be delivered upon acceptance, you're obligated to actually deliver on that. If you don't, a freelance contributor can take you to small claims court and present a strong case.