Understanding and Negotiating Book Publication Contracts

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Often, the first payment you’ll receive from your publisher will be an advance, which is a payment credited against all or some part of your future earnings. (Note that while advances are typical in trade publishing, they are uncommon for scholarly works published by university presses.) If you receive an advance, your book must first earn back this amount before you’ll receive any additional royalty payments (and possibly other payments). People in the book business often refer to this process as earning out or recouping your advance.

**Literary Lesson**

If you get a $1 royalty per book and a $20,000 advance credited against your royalties, you’ll need to sell 20,000 copies of your book to recoup your
advance. Therefore, if only 15,000 copies are sold, you will still have $5,000 left to “earn out” before you see any royalty checks.

An author’s advance is influenced by many factors, including the potential market size for the book, whether the author is a new or established writer with an existing audience, the book’s timeliness and competition, and a publisher’s calculation of risk and reward. A sample advance clause looks like this:

The Publisher agrees to pay the Author as an advance against all Author’s earnings accruing under the terms of this Agreement the sum of X, of which Y is payable on the signing of this Agreement and Z is payable on delivery of the final manuscript.

Advances are sometimes broken into two payments: half when the book contract is signed and the other half when the final manuscript is delivered to the publisher. However, some publishers follow a different payment schedule, and a recent trend is to break the advance into three, four, or even five payments.
You may want to think about what payment milestones make sense for your project. For example, some common milestones are the signing of the contract, delivery of the manuscript, acceptance of the manuscript, or publication. Be sure you understand the amounts that will be paid and what’s required for each milestone, and make sure this works with your needs. For example, if you are writing a book that requires a lot of research and will take years to complete, it might make sense to receive payments earlier in the process than you would if you have a near-finished manuscript. One purpose of an advance is to support the completion of your book, so be realistic about what you need and when you need it—authors can’t live on words alone!

Less author-friendly terms delay payment until acceptance of the manuscript or until publication. These milestones force the author to wait the longest to be compensated and require some action from the publisher in order to trigger the payment. If you absolutely cannot avoid this kind of language in your advance clause, consider trying to include a schedule that has a payment deadline:
Publisher shall pay to Author as a royalty advance against all monies accruing to the Author under the Agreement, half payable upon signing of the Agreement, and half payable upon initial hardcover publication of the Work or X months from delivery of the complete manuscript, whichever is sooner.

HOW MUCH SHOULD YOUR ADVANCE BE?

Unfortunately, there aren’t any hard-and-fast rules about the size of an advance, because every book deal is based on so many variables.

Sometimes, it makes sense to negotiate for the biggest advance possible. In some parts of the book industry, such as in trade publishing, an advance is often seen as a proxy for how dedicated a publisher is to a particular book. Remember, because an advance is a credit against your royalties, if your publisher pays you a big advance, it has an incentive to market your book aggressively so that it sells enough copies to recoup this payment. Generally, you want your publisher to have
“skin in the game,” and a large advance is one way to ensure it will do its best to make your book successful.

**Success Story**

An author who was interviewed for this guide wanted his book to be affordable and to be widely distributed, and he knew marketing would be important. Not being familiar with the publishing business, he hired an agent. The author and his agent pushed for a large advance in exchange for a modest cut in his royalty percentages. This way, the publisher would have the biggest financial incentive to market his book, as it stood to make more money once the author recouped. Further, the author agreed to use half his advance to hire an independent publicist to promote his book. This made it easier for his publisher to agree to a large advance as this increased the likelihood that the author’s book would be financially successful.

On the other hand, it’s possible that you may not receive an advance at all. This is more common than
many authors realize, especially outside of trade publishing. And, in certain circumstances, you might not want to take an advance. For example, your publisher may offer you a higher royalty percentage if you don’t take an advance, which could result in you earning more money over the long term if your book is successful. Or, you might be able to use a low (or no) advance as a bargaining chip to get better terms in another part of the contract.

Whatever the size of the advance you settle on, it’s important that you pay attention to how your advance will be recouped. Commonly, an advance is credited against “all earnings” under the contract with the publisher, meaning both royalties and money earned from subsidiary rights that are licensed to third parties, such as translation rights or movie rights. (For more on licensing of these subsidiary rights, turn to Chapter 6: Subsidiary Rights.) Sometimes, an advance is credited only against royalties (i.e., the money earned from selling physical or digital copies of the book—for more on royalties, see Chapter 13: Royalties). You may want to try to limit recoupment of your advance to royalties rather than “all earnings” because this means you could see some additional money sooner.
Bailey Blockbuster gets a $50,000 advance for her dark legal thriller *The Plea Bargainer*. Before the book is published, Bailey’s publisher sells the movie rights to the novel for $45,000. If Bailey’s advance is calculated based on “all earnings,” she won’t get an additional check from her publisher as she is still unrecouped. If her advance is based on royalties only, however, she’ll get her cut of the movie rights money before her advance earns out because her publisher has to pay her a percentage of third-party licensing revenues.

**WHAT HAPPENS IF YOUR BOOK DOESN’T EARN OUT?**

Not every author is a bestseller, nor does every book earn back its advance. In some rare cases, your contract may specify that you have to repay the part of your advance that doesn’t earn out. This shifts a lot of financial risk to you, so if your contract includes such terms, you may want to negotiate them out. But in most cases, you just won’t receive any royalty payments until the advance is fully recouped.
It is important to understand whether your contract includes a *cross-collateralization* clause. A cross-collateralization clause (also called *basketing*) allows the publisher to recover any unearned advances from one book against money coming from another book by the same author. Publishers use this clause to ensure repayment of an otherwise non-recoupable advance as it allows them to count income from any of an author’s books against unrecouped amounts.

**Literary Lesson**

Donovan Dragon submitted the manuscript for the second book in his fantasy opus *A Song of Water and Smoke* to his publisher. The first book in the series, *A Contest of Chairs*, earned back only $18,000 of the $25,000 advance he received. According to his agreement, he is to receive a $20,000 advance upon delivery of his second book, *A Melee of Monarchs*. However, when the check arrives it’s for $13,000 instead of $20,000. Accounting error? Nope: cross-collateralization! In this case, Donovan’s publisher deducted the remaining unrecouped $7,000 from his first book from the advance for his second.
If your agreement contains cross-collateralization language—often, this will say something like “all works covered by this Agreement and any other agreement between the parties shall be considered one joint account...”—you may want to try to remove the clause completely. Short of that, specifying a dollar cap on the cross-collateralization is another way to limit its effects.

If your agreement is just for one book, it may seem like this clause won’t come into play—and it won’t, if this is the only book you’ll ever publish with this publisher. But the cross-collateralization clause might matter a lot if you land another book deal with the same publisher, and you will likely thank yourself for paying attention the first time around.

**OTHER SITUATIONS IN WHICH YOU MAY HAVE TO REPAY AN ADVANCE**

There are two additional situations where an author may have to repay his advance:

1. if the manuscript is not to the publisher’s satisfaction; or
2. if the author fails to deliver a manuscript to the publisher on time (or at all).
A contract may include language in the advance clause spelling this out. Under the first scenario, the publisher might decide the submitted manuscript is unacceptable or unpublishable. If this happens, the author will usually be given the chance to fix the manuscript to make it acceptable to the publisher. (For more about satisfactory manuscript clauses, see Chapter 7: Your Book.) If the author can’t—or won’t—fix the manuscript to the publisher’s satisfaction, or if the manuscript is still deemed unacceptable after revisions are made, the author may have to repay the advance and the book contract will likely be terminated. (For more information on terminating contracts, see Chapter 17: Termination.) However, some contracts allow an author to keep all or part of her advance, even if the publisher ultimately decides not to publish her book. If your publishing contract contains payback language, you may want to try to negotiate a change so that you are allowed to retain your advance money, especially in cases where you’ve made a good faith effort to provide a satisfactory manuscript.

In the second scenario, if the author fails to deliver a manuscript on time, the publisher might allow an extension. If the author fails to meet the
second deadline, the contract may allow the publisher to terminate the publishing agreement and require the author to pay back the advance.

Provisions covering this scenario often look like this:

Should the Author fail to deliver all materials specified in Clause X ... the Publisher may decline to publish the Work. If the Publisher so declines in writing, this Agreement shall terminate and ... the Author shall refund any part of any advance already paid by the Publisher within 30 days of a request in writing from the Publisher to do so.

If your contract requires repayment of your advance under similar circumstances, then pay close attention to where the repayment funds will come from. Sometimes, the advance must be repaid immediately upon termination of the book contract, which likely means you’ll have to pay out of pocket. A better option is to include a *first proceeds* clause. This type of clause specifies that any money you receive from a future publication contract for the same work (say, an advance you get from another publishing house) must be used
to repay your publisher. In other words, you get to delay paying back your advance to your first publisher until you’ve struck a deal with another publisher. This type of clause also typically mandates that you make every effort to sell the book to another publisher to repay the first publisher’s advance. And in some cases, if you don’t secure another contract within a specified period of time, you may be required to pay back the advance out of your own pocket.