

GUIDE FOR PUBLISHERS COMMISSIONING EDUCATIONAL MATERIALS



Considerations for calculating the author share

This guide is on fair and proportionate payment for authors for the work they contribute, their marketing efforts, their expertise and the opportunity cost of the work they do.

1. Why it matters

The Publishers Association's [Code of Practice](#) opens by stating that 'A constructive and co-operative relationship between book authors...and their publishers is vital to successful publishing.' The opportunity for authors to share in the success of their work is fundamental to the building of this relationship.

A fair return for the author protects publishers' business interests in both the short and long term.

At the individual project level - the potential to earn further income from the commissioned work incentivises the author to invest time and expertise in the quality of the work and its promotion. If the creator is only paid a one-off fee, the future success of the material is irrelevant to them. Quality may suffer, and publishers may lose out on the marketing opportunities that come from an author's social media engagement or school visits unless such activities are separately paid for. Even the most conscientious freelance will wonder: why go the extra mile, or devote extra time, to the commission when it would bring them no additional benefit?

Taking the wider view - where copyright is assigned for a one-off fee:

1. The creator is excluded from further payment, no matter how widely the material is exploited
2. But it can actively detract from the creator's chances of earning money more widely. This is the case if, for example, multiple rehashes of a single non-fiction work appear under the author's name, or if the publisher includes a non-compete restriction in the contract
3. If they do not receive a fair return on their time and effort, creators are limited in the extent to which they can focus their careers on writing these resources.

Proper payment allows authors to make a living and ensures that publishers have access to a diverse pool of talent. Without it, ultimately publishers may lose out on a depth of experience which would benefit their publications and increase revenue.

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2. Elements of payment

Fair payment comes in two parts:

- An initial sum to reflect the working time and expertise given by the freelance in meeting the commission
- A share of the profits generated by the exploitation of that material if the resulting work sells strongly.

This accords with clause 5 of the Publishers Association's Code of Practice, which states that 'the publisher must give the author a proper opportunity to share in the success of the work.'

2a) The up-front payment

Most writers and illustrators are self-employed, and unsalaried. Any use of their time and skills must be properly paid for. A freelance fee should take into account the hours working directly on the publishers' project as well as their overhead and administrative time, holidays and skills training.

It is very easy for salaried staff to forget that things like a holiday allowance, and the cost of wear-and-tear and administrative overheads, are not a bespoke part of the package as is the case for those on the payroll.

2b) Further payments

The up-front payment should be guaranteed unless the creator is in breach of contract. It usually reflects the working time spent on creating the commissioned material - but not the commercial potential of that material.

Creators understand that publishers often have substantial up-front costs, while the end-product (especially in children's publishing) may be highly price sensitive, so budgets can be tight and the commercial risk sometimes high, but once those costs have earned out the creator should be entitled to a share of the work's success. It is hard to see any grounds on which a publisher could deem that principle to be unfair or commercially unviable.

There may be some circumstances where the upfront fee is substantial enough for the creator to be prepared to accept a one-off payment. But, in general, one of the following arrangements should apply:

Royalties/a share of sub-licensed rights income:

Either the creator may be entitled to a royalty (and share of sub-licensed rights income) in addition to the fee;

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Or, the fee can be treated as a non-returnable advance on account of royalties (and share of sub-licensed rights income) – which means the publisher makes further payments to the creator only after the work has already generated substantial income for the publisher.

Refresher fees:

If royalties are not viable (e.g. where the work in question is not sold but is a free component of a wider package of materials which are sold, or where there are multiple contributors so apportioning and accounting for royalties becomes onerous), the creator should be entitled to a further fee in some or all of the following situations:

Per [5,000] units sold/given away
For every new edition which has a new ISBN
For every identifiable sub-licensed use (e.g. foreign language editions)
For every year during which the material is being exploited.

3. The size of the up-front payment

Fees are a matter for individuals to negotiate and competition law prevents us from recommending rates. However, [Andrew Bibby's Ready Reckoner](#) compares freelance daily rates to full-time salaries. For instance, a day rate of £283 equates to an annual salary of £25,000 while £426 per diem is equivalent to earning £40,000 a year.

The National Union of Journalists (NUJ) issues a [Freelance Fees Guide](#) and the Chartered Institute of Editing and Proofreading (CIEP) suggests [minimum hourly rates](#) as a starting point for negotiations. The National Minimum Wage is given at www.gov.uk/national-minimum-wage-rates and further guidance can be found at www.societyofauthors.org/advice/rates-fees.

Appropriate fees may be considerably higher, depending on factors including the level of expertise needed, and the urgency with which the project must be completed. Fees should not be undermined by the person commissioned having to pay any costs (e.g. copyright permission fees) and, for instance, in connection with research, agreed expenses should be paid.

Where copyright is assigned and there is no mechanism to revert rights, the payment should take into account that this arrangement prevents the author from benefitting further from the work even if it is no longer being used by the publisher (e.g. if the publisher chooses to cease publication of the work or if the publisher goes out of business). The material has a value which runs beyond the initial uses and should therefore command a premium payment in return for the assignment of copyright.

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If the person commissioned is VAT-registered, VAT must be added to any payments. Freelancers should be responsible for their own tax and not paid via the payroll.

4. Other terms

The size and nature of payment, although fundamental, is of course not the only important consideration for a creator. A published work is an expression of the author's expertise and creativity, and how that work is published affects their professional reputation.

Credits and proper metadata are therefore fundamentally important to the creator and should be guaranteed as standard. Credits are also necessary for the author to claim public lending Right and Authors' Licensing and Collecting Society (ALCS) payments – both of which are of direct financial advantage to the creator.

If the publisher requests a copyright assignment and/or a waiver of the author's moral rights, that should be made clear at the commissioning stage and the author's agreement to cede control over their work should be recompensed by a higher payment, and in those circumstances the publisher should always allow the author the right to see the final, edited version and to decide whether they would prefer not to be credited.

5. Industry precedent

The principle of a fair author share is not radical. It is enshrined in Article 18 of the European Union Copyright Directive, which provides that:

Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration.

Article 20 sets out a contract adjustment mechanism (or “bestseller clause”) allowing authors to claim additional remuneration when sales are better than expected:

Member States shall ensure that...authors and performers or their representatives are entitled to claim additional, appropriate and fair remuneration from the party with whom they entered into a contract for the exploitation of their rights, or from the successors in title of such party, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances.

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Although the UK has chosen not to adopt the Copyright Directive, these provisions serve as a reminder of the importance of a fair distribution of the rewards from publication and should be considered a minimum standard, irrespective of the contents of any UK-EU trade deal. And the reason for this is clear: by adopting these principles, publishers are investing in their authors and their own commercial futures.

- Find out more about the [SoA's C.R.E.A.T.O.R. campaign](#) on fair contract terms
- Learn more about the [SoA's Educational Writers Group](#)

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