



Standard Contract

Updated 09/29/2017

**Written by CPE (Conseil Permanent des Ecrivains) and approved by SGDL
(Société des Gens de Lettres)**

This Standard Contract is derived from a Union Agreement signed between the French publishers' union (SNE) and the French authors' association (CPE) on 21st March 2013 and is applicable under French law since 1st December 2014.

**CPE Publishing Standard Agreement
(Hereinafter referred to as the “Agreement”)**

Version dated 02/20/2015

Established between the undersigned:

.....

Hereinafter referred to as the “Author”

And

.....

Hereinafter referred to as the “Publisher”

The following has been agreed,

GENERAL PROVISIONS

ARTICLE 1 – SUBJECT-MATTER OF THE AGREEMENT

The Author agrees to grant the rights on their literary work, titled “.....”, hereinafter referred to as the “Work”, on an exclusive basis to the Publisher as follows:

- the right to manufacture or have manufactured copies of the Work (Part 1);
- secondary and derivative rights attached to the Work (Part 1);
- the right to adapt the Work in a digital version and to make digital copies (Part 2).

The features of the Work can be defined in the annex.

Any right which have not been explicitly granted to the Publisher, remain the sole property of the Author and cannot be exploited, except in the case of the drafting of a new agreement or additional clause agreed upon by both parties. Under subparagraph 3 of article L.131-3 of the French Intellectual Property Code (IPC), the grant of rights for an audio-visual adaptation of the Work shall be subject to a separate agreement.

The Agreement complies with articles L.132-1 et seq. and articles L.132-17-1 et seq. of the IPC.

[Comment

For the authors who are part of a collective management society (ADAGP, SACD, SAIF, SCAM), we invite them to contact these societies to verify the grant of rights. In some cases, they have the ability to negotiate or help authors negotiate their agreement.]

ARTICLE 2 — THE AUTHOR’S DUTIES

1/ Warranty clause

The Author guarantees the Publisher the unencumbered and undisturbed grant of rights and guarantees the Publisher against any dispute, claim and legal dispossessions. The Author declares in particular that the Work is original, free from any plagiarism from other protected works and free from slanderous or harmful statements such as to render the Publisher liable.

The Author further guarantees that the Work is not the subject-matter of another agreement, nor subject to any preferential rights*, nor that any right related to the Work was transferred to any collective management society, and that therefore, the Author is eligible to sign the Agreement.

**Under article L.132-4 of the IPC.*

[Comment

For certain types of literary works (such as auto fiction or photography...) which can lead to legal actions from third parties, it is advised to discuss these matters with the Publisher beforehand, and if the Publisher agrees, it is advised to add a provision such as : “Given the specific nature of the work, which the Publisher claims to fully know, the parties have agreed that in case of a lawsuit, the Publisher will not hold the Author responsible and will face all convictions and all fees related to the actions and claims by a third party”.]

2/ Handing-over of the items allowing publication

The Author shall send the Work in its last and final version to the Publisher, who shall acknowledge its receipt. The delivery date is on and triggers the publication terms set forth in articles 11 and 22-1 of the Agreement.

The original documents given to the Publisher shall be handed back, upon request, to the Author within three (3) months from the publication. In case of a dispute regarding the conservation and the restitution of the original documents by the Publisher, the parties agree that the statute of limitation shall be ten (10) years, under article 2254 of the French Civil Code.

In case the Publisher is unable to return the original documents back to the Author within the deadline, the Publisher shall pay the lump-sum of: euros, as compensation.

[Comment

In case of a literary work being co-written, it is in each Author’s best interest to be legally bound for their own personal contribution and their own remuneration, as a guarantee for their own commitment. Otherwise, in case one of the co-authors hands out their contribution to the Publisher within the given time limit but the other does not respect the given time limit, the Publisher can potentially consider it as a failure to hand over the documents needed for the publication of the Work and would be consequently entitled to ask the first co-authors the reimbursement of the advance payment if any was paid.

It is also in the co-authors’ best interests to come to an agreement regarding the specific provisions that would allow the Publisher to be able to ask for a reimbursement of the advance payment.

It would be essential to specify that if “the prior formal notification sent to the Author via registered letter with return receipt requested remains unanswered within 15 days of its reception”, the Publisher will be able to request the termination of the Agreement at the sole responsibility of the Author, without legal action.]

ARTICLE 3 — THE PUBLISHER’S DUTIES

1/ Publication

The Publisher shall personally ensure the publication of the Work, within the deadline, and at their own costs as stated in articles 11 and 22 of the Agreement.

2/ Constant and monitored exploitation

The Publisher shall ensure a constant and monitored exploitation of the Work and shall ensure favourable conditions for its exploitation in any versions as stated under the Agreement through its communication to the public and to interested third parties:

- article 12 of the Agreement underlines the conditions for the constant and monitored exploitation of the Work in its printed version;
- article 23 of the Agreement underlines the conditions for the constant and monitored exploitation of the Work in its digital version.

3/ Grant of rights to third parties

Subject to a preliminary publication under article L.132-1 of the IPC, and within the rights granted to them by the Agreement, the Publisher is authorized to grant rights to third parties in both France and abroad to copy and display all or part of the Work. Upon the execution of the grant of rights agreement with any third party, the Publisher shall inform the Author of all the rights granted to the third party by giving them all the important information of the agreement: name of the third party, term, territory, payment arrangements, etc.

The Publisher shall ask for the Author’s previous authorization in case the Agreement is transferred to third parties through capital assets brought into a business. In such situation, considering the buyer, in case a transfer of business shall cause patrimonial or moral damages to the Author, the Author shall be compensated, including through the termination of the Agreement.

The termination of the Agreement shall have no impact on the validity of any grant of rights executed during the term of the Agreement. The Author and the Publisher shall find a common ground for managing any such grant of rights in case of the termination of the Agreement. Failing such agreement, the Author shall substitute the Publisher in its rights towards the Publisher’s contracting party.

[Comment

In regards to the grant of rights to third parties:

The Author is allowed to refuse the granting of rights to third parties; in this case, it has to be explicitly mentioned in the Agreement.

After the termination of the Agreement, when the Author is subrogated to the rights of the Publisher, they can rely on a third party for the handling of their rights (agent, collective management society).

In order to accept the subrogation, the Author shall have knowledge of the agreements signed between the Publisher and third parties.

If there is no subrogation, the Publisher is expected to continue to hold accounts on the exploitation of the Work under their control and pay the Author 100% of the book's income after the termination of the Agreement.]

4/ Accounting statements

The Publisher shall submit to the Author an explicit and transparent report on the calculation of their remuneration due to the exploitation of the Work under the Agreement. The accounting statements shall be sent within a maximum delay of six (6) months after the closing of the company's business accounts.

The company's business accounts are closed each year on.....

The accounting statements are either sent or made available through a digital version, each year on.....

It shall require the Author's prior authorization to have access to the accounting statements through a digital process. The Author shall inform the Publisher whenever they want to withdraw this authorization for any future accounting statements.

In case of such a digital access, the Publisher shall inform the Author on which date the accounting statements are made available and in case access is limited, the Publisher shall inform the Author of the time frame during which the accounting statements shall be available.

In any case, the Publisher shall make available to the Author any accounting statements from previous years, subject to the statute of limitation regarding the conservation of accounting documents.

[Comment

In lack of a specific date in the Agreement, the accounting statements should be sent to the Author every year, at the latest within 6 months from the accounting closing date.]

The accounting statements shall include the following:

- the number of copies in stock at the start and at the end of the accounting period;
- the number of copies manufactured during the accounting period;
- the number of copies sold by the Publisher;
- the number of royalty-free and destroyed copies during the accounting period;
- the list of the grant of rights made during the accounting period;
- the amount of the corresponding royalties due and paid to the Author;
- the tax bases and the rates of the different remunerations due to the Author under the Agreement.

The Publisher is subject to such accounting report duty for all the sales made whatever the network (France, exportations, special operations...). If the Publisher owns such rights, a specific section of the accounting statements shall be dedicated to the digital exploitation of the Work.

[Comment

The Author can negotiate a shorter time for the communication of the accounting statements as well as a remote and direct access online to the accounting statements.

The remote and direct access to the accounting statements, unlike the paper accounting statements, must be voluntary and allow the Author to print the accounting statements and to keep the digital accounting files.

Accounting statements shall be set up for each individual work, even when the Publisher exploits multiple works by the same author.

Under article L.132-6 of the IPC, the accounting statements shall highlight the number of copies constituting the first printing.

The royalty payment shall be made within 6 months from the date of the closing of the accounts.]

Information related to the digital rights include revenues from unit sales and from other types of exploitation of the Work, as well as calculation methods of those revenues including the tax bases and the rates of the remuneration. Each type of exploitation shall appear individually.

The parties agree that no compensation shall be made between the revenues of the Work of the Agreement and the revenues of any other work of the Author published by the Publisher.

[Comment

Following the agreement dated June 29, 2017 (soon to become French law), only a separate authorization from the Author could allow the Publisher to compensate revenues from several titles.]

5/ Royalties payment

Royalties payment shall be made at the latest on each year.

Payment shall be made by wire transfer to the account of the Author. For the purpose of such transfer, the Author shall provide the Publisher with his bank details.

Should such payment be late, interests at the legal rate shall incur.

6/ Audit clause

The Author shall be able to check the accounting statements of the Publisher and any other grant of rights at least once a year and through any third party of their choice, on the condition of two (2) weeks prior notice.

The Publisher shall make available to the Author or to his representative the accounting books, the copy of the sales with the various distributors, stock statements that can be checked with the distributor, all pieces of accounting information or any other justification, agreements, distribution or grant agreements, etc. making it possible to carry out this audit.

The Publisher shall be in charge of any cost due to this audit and shall reimburse the Author of his fees in case mistakes were made in the accounting statements and/or the payment of the Author's rights.

7/ Moral right

Under article L.132-11 of the IPC, the Publisher shall exercise the rights granted to them by the Author in strict compliance to the moral right of the Author. They shall not make any modification to the Work without the Author's prior formal approval.

The Author's prior approval is also mandatory in case the Work shall be subject to an adaptation in full or in part.

ARTICLE 4 – COLLECTIVE MANAGEMENT RIGHTS

Some of the rights granted to the Publisher are managed by collective management societies. The parties agree to such management. Therefore, it is clearly agreed that any contradictory clause of the Agreement shall be void.

The Author declares to be a member of one or more collective management societies able to represent them for the collective management of their rights.

- *right of reprographic reproduction*

The Author shall receive their remuneration under article L.122-10 of the IPC.

- *private copying*

The Author shall receive their remuneration under article L.311-1 of the IPC.

- *public library lending right*

The Author shall receive their remuneration under article L.133-1 of the IPC.

ARTICLE 5 — AUTOMATIC TERMINATION OF THE WHOLE AGREEMENT

1/ Publication and out of print (article L.132-17 of the IPC)

The Agreement shall be terminated automatically if upon formal notice by the Author fixing a reasonable period of time to the Publisher to act, the Publisher has not:

- published the Work within the given time period as set for in the Agreement; or
- carried out the reprint of the Work in case of a stock depletion.

The publication shall be deemed out of print every time the Publisher cannot meet two requests of delivery within three (3) months.

2/ Breach of the accounting statement duty

Whenever the Author does not receive their accounting statements under the legal dispositions, the Author can formally notify the Publisher to do so within six (6) months.

The Agreement shall be automatically terminated whenever the Publisher shall not proceed with the request within three (3) months.

The Agreement is automatically terminated within three (3) months from a second formal notification whenever the Publisher did not send the accounting statements two (2) years in a row in spite of a first formal notification of the Author the previous year. This termination shall be submitted by registered letter with return receipt requested sent to the Publisher.

The Publisher shall proceed to its duties of making and sending the accounting statements under the legal provisions, notwithstanding the lack of formal notification sent by the Author.

3/ Breach of royalties payment duty

Whenever the Author is not paid within the agreed terms of the Agreement, the Author can formally notify the Publisher to do so within twelve (12) months.

The Agreement shall be automatically terminated whenever the Publisher shall not proceed with the request within three (3) months.

The Publisher shall proceed to their duties of paying royalties under the legal provisions notwithstanding the lack of formal notification sent by the Author.

4/ Financial difficulties and judicial liquidation

The Agreement shall not be terminated in the case of any legal procedure for the reorganization plan of a company ("*redressement judiciaire*"). When the company's business is resumed, all of the Publisher's duties towards the Author shall be respected. In case of the transfer of the business, the buyer is bound by the Agreement.

The Agreement shall be terminated when the publishing company's business has stopped for more than three (3) months or whenever a judgement pronounces the judicial liquidation of the company ("*liquidation judiciaire*").

The liquidator shall not proceed with the sale of the printed copies of the Work before informing the Author through a formal notification by registered letter and return receipt requested of their right to buy all or part of the remaining stock in priority to other third parties. The Author has at least fifteen (15) days to use this priority right. The buying-back price of the remaining copies of the Work shall not be higher than 15% of the retailed net price.

5/ End of exploitation clause

The Agreement is terminated if four (4) years after the publication of the Work, for two (2) consecutive years, the accounting statements lack any rights to be paid to the Author directly or in compensation with the advance payment, either on the basis of the sales of the printed copies or on the basis of the consultation of the Work in digital or printed version, or on the basis of its translation.

The Agreement is automatically terminated within three (3) months from a formal notification by registered letter with return receipt requested sent by either the Publisher or the Author, within twelve (12) months from the second accounting report lacking any rights to be paid.

This termination clause shall not apply in case the Work is included in a collection of literary works from the same author or of different authors, if the Author has given their authorization and if the retail sale from the collective literary work in its whole, whether in its printed or digital version, gave right to payment during the concerned period.

ARTICLE 6 — APPLICABLE LAW

The Agreement is under French law.

Any litigation regarding the performance of the Agreement shall be subject to competent jurisdiction specialized in intellectual property law.

[Comment

Before any litigation, it is advised to find a transactional solution. Mediation or conciliation systems exist. In the latter case, one should be careful as to the drafting of such clause which could lead to a first level of conflict resolution outside courts.]

PART 1 — PROVISIONS REGARDING THE PRINTED COPIES OF THE WORK AND ANY SECONDARY RIGHTS

ARTICLE 7 – SCOPE OF THE GRANT OF RIGHTS

1/ Term

The term of the grant of rights is for years.

After the end of the term, the Agreement shall be subject to an implicit renewal for a new period of years, except in case of a formal notification sent by either party at least three (3) months before the end of the term by registered letter with return receipt requested. In this case, at the end of the term, the Agreement shall end without any additional formalities. The Agreement binds the Author and their legal heirs and successors.

[Comment

In the traditional Author-Publisher relationship, the latter shall impose the terms of their own agreement which stipulates that the grant of rights will last for 70 years after the death of the Author or the last co-author in case of a work by multiple authors. It is the legal term for the protection of literary and artistic works under French law. However, authors must know and acknowledge that the law does not prohibit a contract to be negotiated for a more specific period, including a much shorter time than the one applicable in France.

Moreover, the grant of rights is usually either for a specific period (of 5 or 7 years) when the Publisher is granted translation rights on a book published abroad or when a publisher grants the rights of publication on one of their works to a sub-publisher.]

2/ Territory

The Agreement shall be effective in the whole world except for the following territories:

3/ Granted rights

a) Primary rights

Providing the total respect of the Agreement, and in particular articles 13 and 25 of the Agreement, the Author grants the Publisher with the rights to reproduce, publish and exploit the Work in a printed version.

b) Secondary and derivative rights

Subject to the moral right of the Author, the Author grants the Publisher the following secondary rights:

[Comment

Violation of the moral right is often noticed ex post, which means it is noticed after a certain action is carried out and caused the said violation. The Author should be asked a priori for their formal permission to use the Work in ways which are susceptible of putting the integrity of the Work in jeopardy. Such a clause can be written out as such: “The Publisher shall ask the Author for authorization before any adaptation of the Work. Under the moral right of the Author, they shall request the Author’s written permission for the foreseen adaptation. In case of a lack of response within 15 days, the Author’s response shall be considered as a refusal to adapt the Work.”].

Reproduction right and graphic adaptation

The right to reproduce the Work in other formats than its original format, specifically in versions such as pocket, illustrated, deluxe editions or in other collections;

The right to reproduce the Work on all current physical graphic media and particularly through the press (including pre-and-post-publication) or of reprography to the end of sales;

The right to adapt all or part of the Work, for any public and specifically condensed edition or an edition targeted for a particular audience, pre-or-post-publication comic book, to reproduce these adaptations on all physical graphic media.

Translation right

The right to translate, and to replicate these translations on every physical graphic media, the Work and its adaptations, in whole or in part, in all languages, with the exception of.....

Representation right (right to display)

The right to display* the Work and its adaptations and translations, in all or in part, by all means of communications to the public including public recitation, dramatic representation, radio or television broadcast, and via the internet.

**To the exceptions of audio-visual adaptations right.*

The reproduction right and the right to display remain the sole Author’s property, for exploitations other than the aforementioned.

[Comment

The Author is free to keep some or all of their rights, such as the ones regarding the theatrical representation (on stage adaptation).

References to a merchandising clause in the Agreement is not included on purpose as it should not be part of a publishing agreement and if it is needed, it should be the subject of another agreement with the Publisher when the exploitation of a merchandising right is requested by a third party.]

ARTICLE 8 — COMMUNICATION OF THE ITEMS ALLOWING THE PUBLICATION OF THE WORK AND THE “READY TO PRINT AUTHORIZATION” DOCUMENT

The Publisher shall send the Author the final draft of the Work to be published and the Author shall read, make corrections and return it with its authorization to print within weeks (“Ready to Print Authorization”).

In case the Author does not send their Ready to Print Authorization back to the Publisher within the aforementioned timeframe, the Publisher shall delegate the files to a proof-reader of their choosing, without additional cost for the Author.

ARTICLE 9 — PUBLISHER’S RIGHTS

In strict compliance with the moral right of the Author, the Publisher shall determine:

- the format of the printed copy;
- the presentation of the Work;
- the sale price.

The promotion of the Work is the Publisher’s responsibility and shall be submitted to the Author for approval.

The Publisher shall make no modification to the Work without the Author’s written authorization. The Publisher shall clearly indicate, on the cover of the Work as well as any promotional items, the Author’s name or nickname that the Author shall specify.

The Publisher shall choose the release date in conformity with article 11 of the Agreement.

ARTICLE 10 — PRINTING

The Publisher shall print a minimum of copies, which will constitute the first printing.

For each reprint, the Publisher shall send the Author, free of charge, printed copies of the Work for their personal use, then again, one new copy for any new printing.

The Publisher shall inform the Author about the availability of the Work through print on demand system.

[Comment

The print on demand system is developing. The Publisher must inform the Author if they decide to exploit the Work only via the print on demand system and must also respect the criteria for the monitored and permanent exploitation highlighted in article 12 of the Agreement. If this is not the case, the Author will be entitled to the legal automatic termination of the grant of rights.]

ARTICLE 11 — PUBLICATION OF THE WORK IN ITS PRINTED VERSION

The Publisher shall publish the Work on at the latest.

In case the Work is not published within months from the handing-out of the documents allowing publication, the Agreement shall be terminated on the basis of a breach of contract from the Publisher after formal notification from the Author to the Publisher by registered letter with return receipt requested requiring him to proceed with the publication within (1) one month and lack of action from the Publisher.

[Comment

Regarding literature, in the French Practice Code of 1981, the delay of publication for a printed copy was at most 18 months from the final handing of the final version of the Work along with the Ready to

Print Authorization. This delay seems too long today, a book's printing and composition techniques have greatly progressed since 1981. We hence advise a maximum period of 8 months from the final handing-out of the documents allowing publication. A longer period can be justified in a specific context and if agreed upon by the Author and the Publisher.]

ARTICLE 12 — CONSTANT AND MONITORED EXPLOITATION OF THE WORK IN ITS PRINTED VERSION

1/ Definition of the Publisher's duty

From the date of publication, the Publisher shall ensure an active display of the Work giving the Work every possibility for public success.

For this purpose, they shall:

- display the Work in their paper and digital catalogues;
- display the Work as being available in at least one professional database listing the commercially available works;
- make the Work available in high quality standards under the classical and standard rules and regulations, no matter the distribution network;
- meet orders of the Work, at the earliest convenience.

[Comment

The parties can discuss promoting the coming out of the book (fairs, festivals, prizes...etc.) and the Author's availability for it.]

2/ Penalties for failure to comply to this duty

The Agreement is automatically terminated in lack of constant and monitored exploitation within six (6) months from the formal notification of the Author to the Publisher to comply to this duty.

[Comment

The maximum period for the final notification is of 6 months under the law, but the parties can agree on a shorter period which will establish the Agreement's termination date.

Unless agreed otherwise by the parties, the automatic termination of the Agreement has no effect on the Agreement's section regarding the grant of digital rights of the Work as highlighted in article L.132-17-2 of the IPC.]

ARTICLE 13 — AUTHOR'S REMUNERATION

[Comment

In lack of an explicit agreement excluding any compensation of rights, (e.g. translation rights deducted from the advance payment) it is, at least, possible to negotiate that audio-visual adaptation rights, shall not be subject to any compensation under the Agreement.

To avoid any ambiguity, it is essential for the Agreement to include a clause which expressly excludes such compensation between different royalties.]

1/ Advance payment

[Comment

The Author and the Publisher can reach a common agreement for a specific advance payment for the exploitation of the Work in its printed version in one hand and for the exploitation of the Work in its digital version on the other hand.]

In respect to the Work's exploitation, in its printed version, the Author shall receive an advance payment of euros which shall remain permanently vested regardless of the sales or the potential termination of the Agreement.

This advance payment shall be paid according to the following payment plan:

- half to be paid upon the signature of the Agreement;
- half to be paid upon reception by the Publisher of the final and complete version of the manuscript.

[Comment

The common practice is to consider that the value of the advance payment paid by the Publisher must at least cover the royalties owed for half, or for the totality of the first printing in case of a pocket print. Under French law the Publisher should specify the number of the first printed copies in the Agreement, except if the Agreement clearly includes an advance payment. The higher the amount of the advance payment, the more the Publisher will be inclined to put in place the necessary commercial efforts to sell copies of the book. The amount of the advance payment is also a way for many authors to live off the Work and to determine the value of the Work. Indeed, the advance payment can often be the only compensation the authors receive because sometimes the exploitation of the Work does not generate enough royalties beyond the advance payment.]

Under article 25 of the Agreement, the advance payment made to the Author for the exploitation of the Work in the digital version shall not be recouped by the rights due to the Author for the exploitation of the Work in its printed version.

2/ For primary exploitation

In consideration of the grant of the rights for the exploitation of the Work in its printed version, the Publisher shall pay the Author a proportional percentage calculated as such on the public price, before tax, of the Work (net retail price):

- ...% from the 1st to the ... copy;
- ...% from the ... to the ... copy;
- ...% beyond the ... copy.

[Comment

In return for the grant of rights, French law states that the Author shall receive a payment proportional to the revenues from the sales and exploitation of the Work. This remuneration is defined in percentage terms in the Agreement which is negotiated over the counter, the average of the payment is often between 5 and 12% (single author or all the co-authors) depending on the type of the book, the level of sales or the reputation of the author (this range is more often between 8 and 10% for general literature). Publishing policies can therefore vary from publishing houses and especially under different

sectors (general literature, practical and self-help books, children's books, comics, education manuals...). To take into account the eventual success of a book, it could be interesting to set up multiple percentages linked to the number of copies sold.

Example: 8% up to 5000 copies, 10% from the 5001st to 30000th, 12 % beyond the 30001st copy. These ranges need to be progressive (in regards to the amount of copies sold) rather than degressive as mentioned on some agreements by some publishers.]

3/ For the exploitation of the secondary and derivative rights by the Publisher

In case the exploitation of the secondary rights is made by the Publisher directly, the Publisher shall pay the Author the following remunerations:

- reproduction right: for each copy sold, a royalty corresponding to ... % of the public price before tax set by the Publisher;
- pocket book copies: for each sold copy, a royalty corresponding to ...% of the public price before tax;
- translation right: for each sold copy, a royalty corresponding to ...% of the public price before tax;
- adaptation right: a royalty corresponding to ...% of the proceeds collected by the Publisher from this exploitation.

4/ For the exploitation of the secondary and derivative rights by a third party

Whenever the Publisher has transferred any right to a third party, the Publisher shall pay the Author% of all gross amounts accounted and collected by the Publisher.

The Publisher cannot deduct any expense or commission from the aforementioned royalties.

[Comment

Practice makes the share 50/50 between the Publisher and the Author of the accounts received from the third party. Moreover, nothing is stopping the Author from negotiating a higher percentage (60 or 70%) especially if the Author is the one who found the exploitation by the third party.]

5/ Royalty-free copies

The Author shall not be paid on the following copies:

- the two (2) copies intended for the official National Public Library (BNF) deposit;
- a maximum number of copies intended for the press, promotion and publicity [must be (%) proportional to the first printing];
- the ... free copies given to the Author.

In every case the Publisher shall be able to justify to the Author which copies were royalty-free. In lack of such justification, the Publisher shall pay royalties on those copies.

ARTICLE 14 — ACCOUNTING STATEMENTS

References to articles 3.4 and 5.2 of the Agreement regarding accounting statements.

ARTICLE 15 — COPIES SOLD TO THE AUTHOR

In addition to the Author's copies, the latter can request the Publisher to give him additional copies, which will be priced at % of the public price before tax. The shipping and delivery costs shall be at the Publisher's expenses.

[Comment

The minimum payment should be equal to 40%, even if in practice they are closer to an average of 25 to 35%.]

ARTICLE 16 — PARTIAL DESTRUCTION OF THE STOCK

If, within the two (2) years following the sale of the book, the Publisher still has in stock more copies than they judge useful or necessary for the normal exploitation of the Work, they can suggest to the Author to buy them back without the Agreement being automatically terminated. In case the Author refuses the buy-back, the concerned stock shall be partially destroyed. The remaining stock must allow the Publisher to carry on his duty of a constant and monitored exploitation.

The Author shall be informed of the partial destruction of the stock in the annual accounting statements.

ARTICLE 17 — TOTAL DISCOUNTED SALE AND TOTAL DESTRUCTION OF THE STOCK

In case the sales of the Work are poor during the first two (2) years after its release date, upon notifying the Author two (2) months in advance via registered letter with return receipt requested, the Publisher shall have the right to either, discount the copies still in stock, without royalties to the Author when the remaining copies are sold at less than 25% of the public price before tax, or, destroy the whole stock.

Either way, within thirty (30) days following the notice explaining the different situations, the Author shall have to let the Publisher know by registered letter with return receipt requested, if they would rather buy part or all of the copies still in stock themselves at a price below its original sale price or at the price of fabrication in case of the destruction of the stock.

If the Author indeed buys back part or all of the stock, they will only be able to sell those copies themselves or through a third party once they have removed the Publisher's name (and all existing references to the Publisher from the copies).

In the case of a total destruction of the stock, the Publisher, if asked by the Author, shall transmit a certificate with the date of the completion of the operation and the number of copies destroyed.

ARTICLE 18 —FORCE MAJEURE

In case of force majeure resulting in damaging or destroying all or part of the stock, the Publisher shall not be held responsible for such damages or destruction and shall therefore not pay any compensation to the Author.

However, if the Publisher receives compensation from his insurance policy for the destroyed stock, the Author shall receive a proportional amount of the compensation.

PART 2 – PROVISIONS REGARDING THE DIGITAL COPIES OF THE WORK

ARTICLE 19 — SCOPE OF THE GRANT OF RIGHTS

1/ Term

The term of the grant of rights is for ... years.

After the end of the term, the Agreement shall be subject to an implicit renewal for a new period of years, except in case of a formal notification sent by either party at least three (3) months before the end of the term by registered letter with return receipt requested. In this case, at the end of the term the Agreement shall end without any additional formalities. The Agreement binds the Author and their legal heirs and successors.

[Comment

In the traditional Author-Publisher relationship, the latter shall impose the terms of their own agreement which stipulates that the current grant of rights will last for 70 years after the death of the Author or the last co-author in case of a work by multiple authors. It is the legal term of the protection for literary and artistic work in France. However, authors must know and acknowledge that the law does not prohibit a contract to be negotiated for a specified period only, including for a much shorter time than the period under literary and artistic property recognized in France.]

2/ Territory

The Agreement shall be effective in the whole world except for the following territories or linguistic region:

[Comment

Geographical and state borders disappear in the digital sphere, but it is possible to exclude a language from the Publisher agreement.]

3/ Granted rights

The Author grants the right to the Publisher to reproduce and represent the Work in a digital version.

Reproduction and adaptation rights

The right to reproduce or to have reproduced all or part of the Work through any means and on all existing or future digital recording media, in particular in the version of CDs, e-book, sim cards, usb keys or on all products allowing the digital information to be stored temporarily or permanently, allowing the consultation or the downloading of the Work both off and online.

The right to reproduce adaptations of all or part of the Work through any means, for all exploitations on all digital recording media.

Representation right (right to display)

The right to represent or to have represented in all or in part the Work, as well as its adaptations and translations through any existing or future procedures of public communications, through digital

network, and specifically internet, Intranet, or any other system intended for mobile phones and for personal assistants, to video game consoles, or through all existing or future similar methods. This right covers the distribution in internal company networks, libraries, education or training institutions, as well as any public or private legal entity.

Translation right

The Author also grants the right to translate, all or part of the Work, in every language, and to reproduce these translations on any digital recording media.

ARTICLE 20 — COMMUNICATION OF THE DOCUMENTS ALLOWING THE PUBLICATION AND THE DIGITAL “READY TO COPY”

The Publisher shall send the Author the final digital draft of the Work. The Author shall, read, correct, and return the draft with its authorization to display within weeks (“Ready to Copy Authorization”).

In case the Author does not send their digital Ready to Copy Authorization back to the Publisher within the aforementioned timeframe, the Publisher shall delegate the files to a proof-reader of their choosing, without additional cost for the Author.

There is no need for a digital Ready to Copy Authorization when the digital version of the Work is identical to the printed version of the Work.

ARTICLE 21 — PUBLISHER’S RIGHTS

Subject to the moral right of the Author, the Publisher shall determine:

- the format of the Work (the digital version shall be identical to the printed version);
- the presentation of the Work;
- the sale price.

The promotion of the Work is the Publisher’s responsibility and shall be submitted to the Author for approval.

The launch date of sales shall be determined by the Publisher within the given time limit as stated in article 22 of the Agreement.

ARTICLE 22 — PUBLICATION OF THE WORK IN ITS DIGITAL VERSION

1/ Publication duties

The Publisher shall publish the Work in its digital version:

- within three (3) months after the publication of the Work in its printed version, or with a longer delay with the Author’s consent, in case of successful sales of the Work in its printed version;
or
- within six (6) months of the reception of the documents allowing publication, in the absence of the publication of the Work in its printed version.

2/ Penalty for lack of publication

The Author, by notifying the Publisher via registered letter with return receipt requested, can obtain the automatic termination of the Agreement in lack of publication of the Work in its digital format in the agreed timeframe.

[Comment

According to the law, the following timeframes could also apply:

Upon notification by the Author via registered letter with return receipt requested, the Agreement is terminated if the Work has not been published 15 months from the communication of the documents allowing publication from the Author to the Publisher. Shall there be no evidence of such communication, 3 years from the signing of the Agreement; or

The Author can also obtain such automatic termination by notifying the Publisher via letter if the Work has not been published within 2 years and 3 months from the handing over from the Author of the documents in a format allowing publication or 4 years from the signing of the Agreement.]

3/ Moral right

The Publisher shall bring no modification to the Work without written consent from the Author. They shall further include the Author's name or nickname as indicated by the latter, on the first page of the Work, on the Work's promotional items as well as all as in the credits if applicable. The name or nickname shall appear next to the title and the name of the Publisher.

ARTICLE 23 — CONSISTENT AND MONITORED EXPLOITATION OF THE WORK IN ITS DIGITAL VERSION

1/ Definition of Publisher's duty

From the date of publication of the Work, the Publisher shall:

- fully exploit the Work in its digital version;
- display the Work in its digital catalogue;
- to make the Work accessible to the public in an exploitable digital version, and at least in one non-proprietary version, taking into account usual market formats and their evolutions;
- to make the Work accessible for sales, on at least one commercial website for online sales, in a non-proprietary version.

2/ Penalty for failure to comply to this duty

The Agreement shall be automatically terminated if, upon formal notification from the Author granting the Publisher an extension of six (6) months, the Publisher has not fulfilled one of their obligations under this duty.

[Comment

The law provides for a maximum of 6 months before the Agreement is terminated. The parties can however agree on a shorter period of time to terminate the Agreement that will mark the date of the Agreement's termination.]

ARTICLE 24 — TECHNICAL PROTECTION MEASURES AND/OR TECHNICAL INFORMATION MEASURES

The Publisher may resort to digital rights management, knowing that the introduction of these measures can result from commercial choices or technical necessities and that their aim is to manage the granted authorization of the protection of the Work against illegal and unauthorized acts, as well as the Work's identification and keeping track of its uses.

The Author shall have the possibility to obtain all the information related to the essential features of the technical measures employed within the context of the digital exploitations underlined in the Agreement.

[Comment

There are different kinds of protection and information techniques that are not necessarily blocking the Work's exploitation. They can contain information related to the Work and the Author or enabling the management of the Author's rights. If despite everything, the Author does not want any digital rights management on the Work, it has to be expressly mentioned in the Agreement.]

ARTICLE 25 — AUTHOR'S PAYMENT

The Author shall be paid on all revenues deriving from the commercialization and the Work's digital display.

1/ Advance payment

[Comment

Under article L.132-10 of the IPC, the Agreement must include the minimum number of copies for the first print or an advance payment. Since first print does not apply to the digital sphere, a specific advance payment for the digital version should be mandatory.]

The Author shall receive an advance payment of euros for the exploitation of the Work in its digital format. This advance payment shall be paid to the Author upon the signing of the Agreement and shall remain permanently vested.

2/ Primary exploitation

For individual downloads, the Author shall receive:

- ...% of the net retail price for the 1st to the ... download;
- ...% of the net retail price ... to the ... download;
- ...% of the net retail price beyond the ... download.

For chargeable consultation of the Work online, the Author shall receive:

- ...% of the net retail price from the 1st to the ... consultation;
- ...% of the net retail price from the ... to the ... consultation;
- ...% of the net retail price beyond the ... consultation.

When there is no unique price, the Author shall receive a remuneration proportionate to the Work's consultations and downloads. The calculation methods will be detailed within the context of a rider amendment signed between both parties.

Should the Publisher sale advertising spaces directly or indirectly in relation to the exploitation of the Work, the Author shall also receive a proportionate remuneration of% of those revenues.

In case of free consultation of the Work for promotional purposes only, the Author shall receive no remuneration. The Publisher shall inform the Author of the different promotional operations he plans to undertake accordingly.

3/ Direct exploitation of translation rights by the Publisher

In return for the grant of translation rights, and in case the Publisher exploits the rights directly, they shall pay the Author the following remuneration:

For each copy sold, ...% of the net retail price.

4/ Exploitation of translation rights by a third party

In the case of the grant of translation rights to third parties by the Publisher, the Publisher shall in return have to pay the Author ...% of their own revenue deriving from this exploitation.

5/ Royalty free copies

The Publisher shall send a detailed reporting of the royalty free copies of the Work in its digital version to the Author in the following cases:

- the copies for the National Public Library (BNF) deposit;
- the copies for the press, promotion and publicity;
- the copies for the Author.

ARTICLE 26 — ACCOUNTING STATEMENT

References to accounting statements are in articles 3.4 and 5.2 of the Agreement.

ARTICLE 27 — REVIEW CLAUSE

In strict compliance with article L.132-17-7 of the IPC, the Author or the Publisher can both ask for the renegotiation of the economic conditions of the digital grant of rights, taking into account the evolution of the market.

Such a review of the economic conditions of the grand of rights can be within the following time frame:

- the Author and the Publisher can both initiate a review request, four (4) years after the signing of the Agreement, and during a period of two (2) years;
- the Author and the Publisher can both initiate two review requests of the Agreement six (6) years after the signing of the Agreement and for a period of nine (9) years;

- the review request can be raised at any time, beyond a period of fifteen (15) years from the signing of the Agreement and in case of a substantial modification of the economy which would create an economic imbalance to the Agreement.

The requesting party must notify the other of an eventual review request via registered letter with return receipt requested. In each of those cases, the party who receives the request has three (3) months to comply with the request.

When the other party opposes the request, they shall notify the first party of the automatic termination of the Agreement, via registered letter with return receipt requested after three (3) months following the reception of the review request or in case of a disagreement following re-examination.

[Comment

The CPE proposes to plan the termination of the Agreement in case of the Publisher's refusal for re-examination, or in the case of a re-examination failure (cf. last paragraph of the clause). It is however reminded that French law also allows the referral to a conciliation committee. Such a clause can be written out in such way:

"When a review request fails or is opposed to by the second party, a conciliation commission composed of Authors and Publishers can be set up. In accordance with the French Practice Code of 2014, the latter will give its opinion within 4 months following the referral".]

Signed on the

In original copies

Author

Publisher
