

# Author Rights and POD

The rise of print on demand has caused concern that publishers will use this new tool to put a stranglehold on copyrights, preventing these rights from ever reverting to authors under standard “out of print” clauses in book contracts.

In the good old days of conventionally printed books, publishers had to keep books “in print” or the author could request the rights back. Only a small percentage of the books published every year sell enough copies to stay in print. Many authors have regained rights to works their publishers dropped, and have successfully self-published or placed those rights with new publishers. In a few cases, these reclaimed books have achieved great success under new management.

With POD, however, publishers can prevent the reversion of rights to authors by claiming that the book is “in print,” even though no copies exist for sale in the trade. This can be a huge barrier for authors because publishers often hold much more than the print publication rights. A grant of “all rights” typically gives publishers the audio rights, screenplay rights, foreign language rights, merchandising rights, and other rights either enumerated or bundled in a vague clause such as, “all other formats hereinafter invented.”

In short, publishers can use POD to hold a literary property hostage. In the old days, if a publisher had no luck with a book, honor — if not law — allowed the author to take back the rights and try his or her luck elsewhere. *The Beautiful Plan* went in search of clarification from a few experts on the reversion of rights.

## A Publisher’s Opinion

When presented with this scenario at the Book Expo America, one publisher we talked with thought using POD to prevent reversion was right and just. He complained that authors will secretly negotiate deals for their literary works, then wait for reversion to cash in. The publisher goes through the expense of bringing a book into

print and promoting it and the author, so the publisher deserves a portion of the proceeds from sales of the work in formats covered by the contract.

This publisher sounded like he’d been burned by an author who withheld information about a movie deal (or some big payday) until the rights reverted. He makes the point that publishers are entitled to benefit from these deals, which they had no small hand in making possible.

## What “Good Old Days”?

In an interview with *The Beautiful Plan*, publishing impresario Judith Appelbaum, author of *How to Get Happily Published* and a former managing editor of *Publishers Weekly*, gave a little historical perspective. “The sale of all rights is the result of ignorance on the part of authors,” she said, indicating that authors either need to get educated about publishing contracts or be represented by competent agents in contract negotiations. “But even contracts with limited rights sales often have poor provisions for reversion.” Publishers, it seems, have always been reluctant to hand rights back to authors.

Appelbaum referred us to The Authors Guild for expert guidance. The Guild’s web site offers many suggestions for authors negotiating contracts (<http://www.authorsguild.org>). In the “out of print” clause, the Guild recommends that you “specify that availability through print-on-demand or other electronic or mechanical means alone does not make a book ‘in print.’” And in the “grant of rights” section of the contract, “The Guild recommends limiting the publisher’s exclusive right to publish. An author should be reluctant to grant rights . . . the publisher is not capable of exploiting adequately.”

## Revising Reversion

In an interview with *The Beautiful Plan*, Kay Murray with The Authors Guild echoed Appelbaum’s opinion of The Good Old Days: “Publishers have

typically dragged their heels on reverting.” Murray said that she didn’t know of any existing litigation concerning the use of POD to prevent reversion. That doesn’t mean publishers haven’t tried this tactic — it just means they don’t want to go to court over it. “When publishers have been called on it, they usually back off and reach some sort of compromise with the author,” Murray said.

Murray suggested new wording that authors are using to replace old-fashioned reversion clauses. Instead of reversion happening when a book is “out of print,” contracts now call for reversion when author royalties fall below a threshold level for two consecutive royalty periods. That phrasing eliminates a whole slew of problems with language regarding territories and formats.

A royalty-based reversion clause is also recommended by renowned publishing attorney Ivan Hoffman, whose web site contains numerous free articles that help educate authors and publishers about contracts (<http://www.ivanhoffman.com>). In a piece called “Out Of Print Provisions in Book Contracts,” Hoffman says that the out of print clause “is often best established on the basis of income being received by the author during any given accounting period or periods.”

## All’s Well that Ends Well

Many authors feel helpless in negotiations with publishers, but they don’t have to. There are many good resources available for authors to consult in contract negotiations, and most publishers are willing to at least listen to suggestions. The problem with many publishing deals is that all the negotiating is over front-end issues such as the advance, with little attention paid to the back end — what happens when a book’s sales slow. A contract that contains clear, smooth provisions for the return of rights should please both publisher and author.