

### **SFWA Model Magazine Contract, Version 3.1**

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July 29, 2016

The following is SFWA's model contract for short fiction published in a magazine. We deal with possible anthology and audio rights in separate appendices rather in the body of the contract.

As part of its ongoing efforts to educate writers about publishing contracts, the Contracts Committee periodically writes new sample contracts or updates old sample contracts. Address comments or suggestions to the Chair, SFWA Contracts Committee at [contracts@sfa.org](mailto:contracts@sfa.org)

The Model Magazine Contract is based on the model contract prepared by the SFWA Contracts Committee in 1996. That Committee included Michael A. Armstrong, Damon Knight, David Alexander Smith, and John E. Stith. The members of the Contracts Committee who worked on the 2015-2016 revision of the contract were: Michael Capobianco, Jim Fiscus (chair,) Jeff Hecht, Ken Liu, and Rosemary Smith.

The model magazine contract was written by the SFWA® Contracts Committee with the assistance of SFWA's attorney. SFWA's model contracts are written as generic guides to help writers and others understand common publishing contracts and to help them negotiate better contracts. They are not intended to be and should not be used as boilerplate contracts by publishers, writers, or agents, and any such use is not approved by SFWA. Further, any such use should not be cited as being approved by SFWA. Use of this model contract by a magazine does not automatically make sales to that market eligible to be used as credentials for SFWA membership. SFWA's model contracts have been written by writers for writers, and are for educational purposes only.

Legal Disclaimer: Neither the model contract nor the comments thereto are intended to be or should be understood to be legal advice. The issues presented in the model contract are not an exhaustive list of the issues that may arise, and other important issues may need to be addressed depending on the nature of the relationship of the parties, the jurisdiction that you are contracting in and other factors. As with any legal document, you should consult a competent attorney familiar, in this case, with the business of publishing as well as the law of the applicable jurisdiction for legal advice.

Licensing a work as opposed to sale of a work: Writers commonly say they have "sold" a story. In nearly all cases for genre fiction, they have only licensed the right to use the story in a strictly limited way. (A license for First Serial Rights, for example.) The actual sale of a work would involve the transfer of the copyright to a story, which would preclude the author from selling other rights or republishing the story without authorization by the publisher. This is uncommon in genre fiction and there is seldom justification for such a transfer. Note, however, that many nonfiction magazines insist that writers either transfer copyright or license all rights to them so they can maintain articles in their digital archives or republish them in other ways. Writers should be paid a higher rate for such sales.

[Brackets] show where information needs to be inserted, such as the title of the story, or where the language

may vary, such as the language or languages for which a license has been granted and the geographical limits of the license.

### Memorandum of Agreement

This Agreement made between [publisher name], of [street address] [city, state, zip], and its successors and assigns, hereinafter referred to as the PUBLISHER, and [author name], of [street address] [city, state, zip], hereinafter referred to as the AUTHOR.

The parties agree as follows:

#### MODEL CONTRACT

1. The Work. This Agreement pertains solely to the Author's textual work titled "[Story Title]."
2. (a) Limitations On Scope Of Grant.
  - (i) This Agreement is not a transfer of the copyright to the Work.
  - (ii) This Agreement does not permit the Publisher to publish the Work in any revisions of the Magazine in any medium unless explicitly granted by This Agreement.
2. (b) All rights not expressly granted by the Author reside exclusively with the Author. Any rights that may be developed in the future shall reside with the Author.
3. (a) Print Rights: The Author grants [first serial print rights] in the Work to the Publisher for inclusion in [Magazine Name] (the "Magazine"), for publication in the English language [language or languages covered by license] in [geographic region covered] on or before [the date by which first publication must occur].

#### NOTES

The grant of rights should be phrased so that all rights not specifically granted are retained by the author. This helps resolve disputes over unnamed rights that may become important in the future in favor of the author (think of the history of electronic rights).

We believe that the grant of rights should be clearly and strictly limited by the author. That includes any right to republish the work. Electronic, audio, anthology, and other rights must also be clearly stated and limited. (We deal with them below.)

It is important for writers to explicitly retain any rights that may be developed in the future, to avoid the kind of confusion -- and rights grab by publishers -- that arose with the development of electronic rights for databases, CDs, and the Web.

Many magazines will ask for a combination of print and electronic rights these days. We're providing examples of each kind of grant. You may find magazines using either or both.

The rights granted under the terms of this paragraph shall be exclusive for a period of six (6) months following the first date of publication under this paragraph and nonexclusive thereafter.

Note that the difference between granting English rights only or rights in all languages can be substantial. Many writers have success selling their stories in translation overseas. If you do negotiate for English rights only, be sure that the exclusivity provisions only cover English rights so that you can start selling to overseas markets as soon as possible. Geographical limits must also be clearly stated.

(b) Electronic Rights: The Author grants [first world electronic rights] to the Publisher to include the Work in the Magazine, for publication in the English language [all languages] on or before [the date by which first publication must occur.]

Magazines that primarily publish nonfiction may as a matter of policy request or require nonexclusive electronic rights to retain a fiction story indefinitely in their electronic archives. (The Futures column in *Nature* is one example.) In general, writers should be paid a higher rate for such sales.

The rights granted under the terms of this paragraph shall be exclusive for a period of six (6) months following the first date of publication under this paragraph and non-exclusive thereafter.

For the avoidance of doubt, the rights granted to the Publisher under this paragraph are rights only to the publication or dissemination of an electronic replica of the Work as it is incorporated in the Magazine [specify whether the Magazine is to be published as a web site, an e-book, or some other format], and not to any other publication, dissemination or use of the Work.

The grant of nonexclusive electronic rights to the Publisher is subject, however, to the following limitation: after three (3) years from the date of initial publication, Author may terminate the grant of non-exclusive electronic rights and ask the Publisher to remove the Work from the magazine's web site, archives, electronic back issues, bundles, or any other electronic format, and the Publisher agrees that it will comply within 30 days of such request.

(c) Unless the Author specifies otherwise, Publisher will take care to ensure to the best of its ability that the Work is not archived by the Internet Archive or similar archiving web site and is not displayed in its entirety by any other web site, including Google, Amazon.com, or the like.

4. The Author agrees not to publish or permit others to publish the Work in the English language [or languages covered by license] in [geographic region covered] prior to its initial publication in the Magazine and throughout the exclusivity period granted to the Publisher thereafter without the prior written permission of the Publisher. If the Work is selected for a “best of the year” or an awards anthology, the Publisher agrees to waive this clause, provided the Author gives the Publisher prior written notice of the selection by such an anthology.

5 (a) For the rights granted to the Publisher in this Agreement, the Publisher shall pay the Author the sum of [payment amount], no later than 60 days after receipt by the Publisher of this agreement executed by the Author. If payment is not received as required by this paragraph, all rights granted hereunder shall immediately revert to the Author.

5 (b) Payment shall be made by check or by an electronic means agreed to by the Author.

Any fees, charges, or commissions required because of use of electronic means of payment shall be paid by the Publisher.

6 (a) If the Publisher fails to publish the Work by [the date by which first publication must be made], all rights granted

Inclusion of works in “best of the year” or awards anthologies can be important to the writer, and should be exempted from the writer's agreement to not publish the work in a given period of time. As such anthologies also give good publicity to the original publisher, the exemption serves the interests of both writer and publisher.

Writers are not banks, and should not in effect loan publishers money by allowing them to delay payment.

See Appendix C for a discussion of Kill Fees

Electronic payment systems such as Paypal or electronic funds transfer offer an alternative to checks, but may in certain circumstances involve a charge to the recipient. Details vary with the service, and the nature of the transfer.

In all cases, all payments must be adjusted by the Publisher to ensure that the Author receives 100 percent of the money owed after all fees and charges.

International transfers are particularly troublesome, and the charges for checks and wire transfers can be substantial

Payments made in foreign currency can cause delays and incur additional charges and conversion fees. We believe writers should seek to be paid in their own currency -- US dollars paid from a US bank - - to avoid conversion and transfer fees. If not, the Publisher should bear all additional costs.

It is unacceptable for a publisher to tie up a work by not publishing it within a

hereunder shall immediately revert to the Author. In such event, the Author shall retain any payments made under this Agreement prior to such reversion.

reasonable period of time. We believe that for magazines, the limit should be one (1) year for both print and electronic publications. Some magazines are published on an irregular and/or infrequent basis. Thus, a longer period might be reasonable, depending on the publishing schedule of the magazine and other factors. The key is to make the limit both reasonable and explicit.

6 (b) Should the Publisher wish to extend the publishing deadline, Publisher shall pay Author an additional fee equal to [insert agreed percentage] percentage of the initial fee.

7. Arising under and terminating with the grant of rights to the Work in this Agreement, the Author grants Publisher the right to use the Author's name, image, likeness, and biographical material for all advertising, promotion and other use of the Work. Upon request, the Author shall provide the Publisher with a photograph of the Author and appropriate biographical material for such use. The Publisher shall use only the Author's name, image, likeness and biographical material provided and approved by the Author.

8. The Author warrants that, as of the date of executing this agreement, he or she is the sole author of the Work; that he or she is the owner of all the rights granted to the Publisher hereunder and has full power to enter into this agreement and to make the grants herein contained; that the Work is original and any prior publication of the Work in whole or in part has been fully disclosed to the Publisher and that to the best of the Author's knowledge the Work does not infringe upon any copyright or upon any other proprietary or personal right of any person, firm or corporation.

It would be best if the writer make no warranties to the publisher, with the possible exception of being the actual author of the work. But if warranties are demanded, then they must include phrases such as **"to the best of Author's knowledge"** and any violation of the warranty must have been **"intentional"** by the author.

We strongly believe that because the definition of obscenity, what is libelous, and any privacy rights, vary widely between nations and even between U.S. states it is absurd to expect writers to provide any warranties on the subjects.

The Publisher is **ALWAYS** in a better position to understand the laws in the

9. The Author will indemnify the Publisher against any loss, injury, or damage finally sustained (including any legal costs or expenses and any compensation costs and disbursements paid by the Publisher) incurred by the Publisher in connection with or in consequence of an intentional breach of one or more the foregoing warranties, for which the Publisher has no coverage under its insurance policies. The Publisher will add the Author to any insurance policy it may have which would insure against such loss, injury, or damage unless doing so is impractical. Legal representation and the decision to settle will be made in consultation between the Author and Publisher, and neither may proceed without the approval of the other, not to be unreasonably withheld.

10. The Publisher will make no alterations to the Work's text or title without the Author's written approval in e-mail or hardcopy. Author will be provided with the Publisher's proposed version of the work prior to publication and given sufficient time to review text. The Publisher reserves the right to make minor copyediting changes to conform the style of the text to its customary form and usage.

11. The Publisher agrees to list a proper copyright notice for the Work in the name of the Author at the end of the Web-published story and, if published in print, on an appropriate copyright page.

12. The Author will be credited on the table of contents page and at the beginning of the story as [author's byline]

13. The Publisher shall not make the Work available to any distributor, catalogue, service, or computer program which alters the text of the work or the display of the work, beyond typographic or formatting changes that do not affect the meaning of the work, or facilitate such changes -- including but not limited to removing or changing profanity -- without written permission of the Author. Should the Work be so listed without the permission of the Author, the Publisher shall ensure its removal.

14. Regardless of its place of execution, this agreement shall be interpreted under the laws of the State of [name of state].

places where they sell books or magazines.

The author needs considerable protection in any indemnity clause, including that such indemnification only apply to "damage finally sustained" by a court that is not covered by the publisher's insurance. In addition, the writer should be added to the publisher's liability insurance policy if at all possible.

The publisher must also NOT be able to settle a complaint or case without the express permission of the author. Any settlement should be a mutual decision.

Some publishers have, in fact, changed works in a major way without the approval of the writer. Such changes can, and have, damaged the value of a writer's other work.

We added this clause because of software that censors or Bowdlerizes a work after it has been purchased by the reader.

The right to allow or block such programs should rest with the author.

15. The parties agree that any suit, action or proceeding, whether claim or counterclaim, brought or instituted by either party relating to the subject matter of this Agreement, shall be tried only by a court and not by a jury. The parties to this agreement expressly waive any right to a trial by jury in any such action or proceeding.

Both judges and juries can be biased for or against a given party in a case. However, it is generally agreed that jury trials cost substantially more than bench trials, which is why we recommend against a jury trial. At the same time, this provision would sometimes limit an author's options in the event that they have to sue, and should be carefully considered before including it in a contract.

16. VENUE. The parties agree that any action to enforce this Agreement shall be brought in the appropriate state or federal court in the State of [name of state], and that such court shall have personal jurisdiction over each of the parties.

The main purpose of the clause is to block use of arbitration, which can easily be unfair to the weaker party.

17. SUCCESSORS AND ASSIGNS. PUBLISHER may not assign or in any way transfer this contract or the rights granted by it to another person or entity without the written permission of AUTHOR.

Writers have had publications sell the licenses to their works to other businesses without their approval. We added this clause as an important protection for the writer.

18. AMENDMENT. This Agreement constitutes the entire Agreement between the parties, and supersedes all prior writings or oral agreements. This Agreement may be amended, only by a written agreement clearly setting forth the amendments and signed by both parties.

19. VOID PROVISION. If any term or condition of this Agreement is found by a court of competent jurisdiction to be illegal, unlawful or otherwise unenforceable, the parties agree that such term or condition shall be reformed as nearly as may be possible to carry forth the intentions of the parties and that such illegality, unlawfulness or unenforceability shall not act to void any other term or condition of this Agreement nor to void the Agreement as a whole.

20. The parties acknowledge that each party has read and understood this contract before execution.

In witness whereof the parties have executed this contract in duplication originals on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Author

\_\_\_\_\_  
Date

\_\_\_\_\_  
Author's Social Security or Tax ID Number

\_\_\_\_\_  
[NAME OF PUBLISHER OR PUBLISHER'S AGENT], Publisher

\_\_\_\_\_  
Date

Please sign and return all copies. One copy signed by all parties will be returned for your files.

We have chosen to deal with possible anthology and audio rights in separate appendices, which would be placed above the signatures. Regardless of where the language is put in a contract, it is essential that clauses on anthology and audio rights be in a contract and that they be worded to protect the Author.

**Appendix A: Anthology Rights.**

(a) The Author grants to the Publisher for a period of three (3) years the nonexclusive, worldwide English-language right to republish the Work or cause the Work to be republished in any book or anthology consisting of material 80% of which previously appeared in [Magazine Name], and which includes works by five (5) or more contributors.

(b) The Author shall receive a pro-rata share based on page count of 50% of the book or anthology's gross earnings, which includes any advances against royalties, income from all licensed editions, including hardcover, paperback, book club, audiobook, and ebook editions of the book or anthology. Subsidiary rights money will be distributed within 30 days of receipt by the Publisher, so long as a minimum of \$5.00 is due to Author. No payments for subsidiary rights sales will be due until actually received by the Publisher. The pro rata share shall be determined by dividing the total page count of the book or anthology by the page count of the Work.

The primary license to a magazine is for use of the story in the magazine, and any anthology use is a subsidiary use. Authors are entitled to a share of the royalties earned by anthologies containing their work. Payment for use in the magazine is NOT an advance against royalties earned by an anthology.

There have been problems when anthologies defined pro-rata to mean equal payments, dividing the royalties by the number of stories, and not by percentages based upon the length of stories in an

anthology.

Writers have thus found it extremely important to carefully define the terms of payment, and what a pro-rata share is based on.

(c) The Author shall receive one free copy of every edition of the book or anthology.

**Appendix B: Audio Rights.**

(a) The Author grants to the Publisher worldwide non-exclusive audio rights to the Work, solely for use in [Magazine Name]'s podcasting program, provided that those rights are exercised within six months of publication of the Work in [Magazine Name]. The grant of rights to the Publisher in the previous sentence is subject, however, to the following limitation: after one (1) year from the date of initial publication, Author may terminate the grant of non-exclusive audio rights and ask the Publisher to remove the Work from the magazine's audio archives [specify web site or podcasting directory or some other format], and the Publisher agrees that it will comply within 30 days of such request. The Author also grants to the Publisher for a period of three (3) years the additional, nonexclusive right to collect the audio edition of the Work in the future in an audiobook containing the entire issue of the magazine containing the work.

Many of the same issues related to freely available web editions apply equally to freely available podcasts. The advantages of discoverability and accessibility are balanced by the reduction in reprint rights when free podcasts are available. As with the electronic rights clause, we've designed this section to give authors the ultimate control over how to balance these competing concerns by giving them the option to terminate the (nonexclusive) grant after a reasonable amount of time has lapsed so that exclusive audio reprint rights may be sold to other markets.

(b) Author shall be paid a pro rata share of 50% of the gross earnings of such an audio book, determined by dividing the total time of the audio book by the total time of the Work. Subsidiary rights money will be distributed within 30 days of receipt by the Publisher, so long as a minimum of \$5.00 is due to Author. No payments for subsidiary rights sales will be due until actually received by the Publisher.

(c) The Author shall receive one free copy of every audio edition of the book or anthology.

**Appendix C: Kill Fees**

Kill fees for assigned stories or articles are related to Clauses 5 and 6. We see several situations:

1. The story is accepted, but the Publisher fails to pay by the deadline set.

Because the Publisher failed to pay the required fee on time, the Author retains all rights to the work.

2. Story is accepted and paid for, but isn't published by the date set in Clause 6. (We suggest one year for most magazines.)  
Keeping the money paid and reclaiming your rights is not strictly a kill fee.

Options include formally withdrawing story, a firm but polite query about status, or -- if the Publisher fails to respond or claims to still have a right to the work -- SFWA members may contact the Grievance Committee.

Two situations apply to non-fiction more than to fiction.

3. An assigned work is accepted as satisfactory and paid, but is killed by the publisher. If the contract calls for payment on acceptance, the full fee is due. If the contract calls for payment on publication, the full fee is due once the story has been killed. All rights are returned to the Author.

4. Story is commissioned in response to a pitch from the Author or at the invitation of an editor, but rejected after submission. The contract typically is issued after the story is commissioned but before submission of the work, although there are exceptions in nonfiction, especially for freelancers writing regularly for a publication. Such contracts normally specify a "kill fee", which should be 50% but which in practice often is only 25%. Such kill fees may be applied if the publication ceases operation after submission. All rights return to the Author.