#WRITERS, Barnes & Noble Nook Press Contract Terms are INSANELY Bad!

written by Holly
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This is from the April 3, 2013 Nook Press Terms and Conditions:

And trust me, you are going to want to read this bad boy yourself.

But I'll comment here. My highlights of my excerpts of their text are bold, my personal comments are indented italic.

> ***IMPORTANT NOTE:*** *I am not a lawyer. I am a writer who reads the damned contract, and over the last 22 years, I've developed some skill in spotting bad clauses. But I would LOVE to have a lawyer's take on this.*

I've skipped a lot of minor evil, and am taking you straight to the bits about the money.

5. Pricing

A. List Prices. When you submit your eBook to us, **you will provide a list price for your eBook** in one or more currencies in accordance with the then current procedures listed in the Service Polices for list price submission ("List Price"). You will adjust the List Price as required to ensure that, at all times that the eBook is available for sale through NOOK Press, the **List Price does not exceed the maximum list price or go**

below the minimum list price permitted in our Pricing and Payment Terms.

> *Okay. So far, this is within reason, though no link exists to let you see what current "List Price" is, or how you determine where your work will fit in their policy.*

We will **use commercially reasonable efforts to effect any change in List Price you provide to us within twenty (20) days** following the date on which you submit it. We may provide other requirements for List Prices in the Service Policies which your eBooks must meet in order to be accepted and remain on NOOK Press, in addition to the requirements provided in the Pricing and Payment Terms. **The List Price you provide will be exclusive of any applicable value added, goods and services or similar taxes ("VAT")**. If we display a List Price to customers, we may add applicable VAT to the List Price you provide to determine the List Price that we display. If we offer your eBook for sale in a different currency than a currency in which you set your List Price ("Sale Currency"), we may convert the List Price to the Sale Currency at an exchange rate we determine. We may periodically update the converted List Price in order to reflect current exchange rates. If we convert your List Price to another Sale Currency, the converted List Price in the Sale Currency will be your List Price with respect to the offer and sale of your eBook in the Sale Currency for all purposes under this Agreement. For example, **your Royalties (as defined below) will be calculated based on the converted List Price in the Sale Currency**.

> *Do note that they don't say they'll change their price. They use legalese, and say they'll "try." This clause supports the one with big bad teeth further down. Beyond that "we'll try to change your price" bit, though, nothing outside the bounds of the acceptable here, either. They gotta charge tax for places that collect them, they're going to add the tax to the price rather than taking it out of your end. That's how taxes*

work.

B. Customer Prices. **We have sole and complete discretion to set the Retail Price at which your eBooks are sold to the customer.** We or our third party retailers, partners or contractors are solely responsible for processing payments, payment collection, requests for refunds and related customer service.

This, however, is Bastion of Evil #1. *When a retailer discounts a commercially published print book, the retailer has* ***paid*** *for that book, and any losses he takes for discounting the product will be HIS. When a retailer discounts an ebook, he is not taking a small loss to move product, because he has paid NOTHING to have that book in his inventory. (If you're screaming about website maintenance and setting up ebook delivery systems, knock it off. When you own a business, building your damn website is a Cost of Doing Business, it's deductible, and you already have to do that to sell the rest of the products you offer. Ask me how I know.)*

So when a retailer discounts your ebook and you don't sell enough extra copies to make up the difference, he is giving you an arbitrary pay cut. When he raises your set price and cuts your sellthrough to the point that you're only selling a few copies, again the loss of sales is exclusively yours. He loses NOTHING because he paid nothing to begin with. Anything he does, no matter how much it hurts the sale of your book or you personally, is free to him.

But the retailer wants to make as much money as possible, so he would never do this, right?

What is Barnes & Noble? It's a brick-and-mortar chain with a non-stellar online presence. It has a massive, vested interest in keeping print books at the top of the reading food chain, just as commercial publishers do. Commercial publishers have moved the price of ebooks upward to be the

same as or higher than their mass market or trade paper versions. Why? For the publicly stated purpose of SLOWING DOWN EBOOK SALES.

Is it possible that Barnes & Noble, hoping to keep its stores open, might work to make the ebooks in its product line less appealing?

Okay, at this point, I know I sound a bit paranoid—but they do state that, no matter what you suggest for your price, they have no obligation whatsoever to honor it. Keep that in mind as we move forward. And remember, ***ANY legally binding clauses in contracts do not exist just for funsies.***

Beyond that, this is the pricing clause, and there's nothing in here at all about minimum or maximum prices. Not a word.

Anyway, now we get to "your royalties, as defined below."

6. Payments

A. Royalty. If you are not in breach of any of your obligations under this Agreement, for each eBook sold to a customer through NOOK Press, **Barnes & Noble will pay you the applicable "Royalty" defined and set forth in the Pricing and Payment Terms**, net of refunds, chargebacks, bad debt and any applicable taxes charged to a customer or applied with respect to sales to a customer (including without limitation any VAT or sales taxes).

Okay. So you're to get a royalty, after everything else has been subtracted out. Payment terms are next, where you'll find out what your royalty is. Read this next bit twice. Better yet, print it off, and read it three times.

B. Payment Terms. Barnes & Noble will pay or cause to be paid your Royalties on sales of your eBook approximately sixty (60) days following the end of the calendar month during which it

is sold. At the time of payment, we will make available to you an online report detailing sales of eBooks and corresponding Royalties. All payments will be made via electronic transfer payments or other method we designate in the Service Policies in the Sale Currency or other payment currency we provide for in the Service Policies. If we give you the option to change your payment currency and you select that option using our then-current procedures, unless otherwise noted the change will be effective on the first day of the calendar month following the calendar month in which you make the change. If we pay you in a currency other than the Sale Currency, we will convert the Royalties due from the Sale Currency to the payment currency at an exchange rate we determine, which will be inclusive of all fees and charges for the conversion. We may require you to register in your account a valid bank account for receiving EFT payments that is in compliance with the then-current Service Policies, in which case we will not be obligated to make payments of Royalties to you unless you do so. We are entitled to accrue and withhold payments until the total amount due is at least Ten U.S. Dollars ($10) or for payments in other currencies, at least those amounts we set forth in the Service Policies. You may not maintain any action or proceeding against us in respect of any statement unless you commence that action or suit within six (6) months after the date the statement is rendered. Any such action or proceeding shall be limited to a determination of the amount of monies, if any, payable by us to you for the accounting periods in question, and your sole remedy shall be the recovery of those monies with no interest thereon. If we pay you a Royalty on a sale and later issue a refund, return, or credit for such sale, we may offset the amount of the Royalty previously paid for the sale against future Royalties, or require you to remit that amount to us. Negative balances can occur when the value of all refunds of your eBook during a given payment period exceeds that value of orders for your eBook. If you have a negative balance on your payment date, the negative balance may be offset from future Royalty

payments to you. If a third party asserts that you did not have all rights required to make your eBook available on NOOK Press, or if we believe that you may be in breach of your representations and warranties in this Agreement, we will be entitled to hold all Royalties due until we determine that the validity of the third party claim, that you were not in breach or have fully remedied your breach, as applicable. Upon termination of this Agreement, we may withhold all Royalties due for a period of three (3) months from the date they would otherwise be payable in order to ensure our ability to offset any refunds or other offsets we are entitled to take against the Royalties.

> *That's it, Bob. That is the WHOLE ENTIRE DAMNED payments clause, and nowhere in this agreement that you must sign is there one word about* ***what your royalty will be****. The old agreement had it in there, nice and plain. Here? Well…this is what we call "signing a blank check" and* ***THIS is why I keep saying READ THE DAMN CONTRACT****.*
>
> *Throw in the fact that B&N reserves the right to change your cover art without warning and with no redress possible from you (hey, you signed the contract), that you are required to make 100% of your book available for free to anyone reading on a Nook in one of their stores (no time limits or restrictions are mentioned, and if it's not in the contract, it doesn't exist,) and what you have here is the single worst contract I have ever seen in my life. And I've seen some real stinkers.*

So will I be transferring my existing list of books from the existing PubIt program.

No. I'll be pulling everything down

from Barnes & Noble before their cutoff date.

ADDED LATER:

I have now had to spam a couple of comments. This blog has rules for commenters. READ THEM if you don't already know them. I don't mind if you disagree with me, but if you do, BACK IT UP WITH FACTS. Snarky asides with no useful information, and personal attacks on me or the other commenters will get you marked as a spammer.

ADDED APRIL 11:

It comes down to this: **If you read the clauses that are not appended to the contract**, it is somewhat worse than Amazon's contract. Not a lot. Just somewhat.

I have a file cabinet full of contracts, however, and all of them INCLUDE ALL THE PARTS of the contract right IN the contract. You can read the whole twenty-plus page agreement, and it is set in stone. The terms are the terms, printed out there right in front of you. You read them, and then you sign them, and both you and your publisher are bound by them. No part of them can be changed without you rereading and re-signing the whole thing.

The Amazon contract is a one-piece beast. Every time they change the terms, you have to read through and re-sign the whole thing. THIS IS A GOOD THING.

The Nook Press contract is like a publisher who left all the parts of the

agreement that protect you in his other pants.

Sure, he has them, and you can take his word for it that he's looking out for your interests too. But if you cannot read those clauses right in your contract, and they do not exist in the copy of the contract you print out, you are ONLY signing what's contained on the piece of paper in your hand. Contract evil does not necessarily arise out of bad intent or a genuine attempt to defraud. Sometimes it just arises out of stupidity.

Neither option, however, makes a great recommendation for *Barnes & Noble* or **Nook Press** as a promising business partner in the future.

- WRITERS, Barnes & Noble Nook Press Contract Terms are INSANELY Bad!
- WRITERS, Barnes & Noble CORRECTED Its Contract
- Why the B&N contract linking is critical

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