

Illustrators

This chapter uses book illustrators and book cover designs to discuss some of the problems faced by illustrators. Many visual artists are at some time in their career, asked to work on a book. It does not purport to examine the world of the commercial artist in general.

1. Book Illustrators

The relationship between illustrator and the contracting publisher is usually quite straight forward. If the publisher has a clear idea of its artistic requirements it will formulate these in a brief to the illustrator and those requirements will be incorporated into the contract. If the artist is experienced or particularly celebrated the requirements may be far more flexible. In the latter case, the artist is usually selected for his or her idiosyncratic style and talents and no publisher would wish (or be able) to dictate to the illustrator on matters of style and content.

The contract which is set out below is the basis of one that might be used for a reasonably experienced illustrator. It leaves style and subject to the discretion of the artist, it provides a royalty, for reversion of rights in the event of non-exploitation of the works and gives the artist control over any changes that may be sought.

(a) Rights

It is essential that the publisher have all rights that it commercially needs. In most cases this is book rights only, but if a more sophisticated form of exploitation is envisaged, those additional rights must be obtained (and additional payment made). In the sample agreement, the rights are given for the period of copyright and for the world. In many cases the life of the book is inherently a short one (e.g. a diary) or its territory is restricted (e.g. a book produced for a localised market). The parties should only contract for the rights that are commercially necessary for the success of the project.

In the contract below, ownership of the originals is maintained by the artist. This is now the common practice and the more prominent illustrators have found a valuable market for these works. It is important that the publisher have access to the works for as long as it needs to exploit its book reproduction rights but it has no need to retain ownership of the originals. If it wishes to do so, that should be a matter for additional payment.

(b) Exploitation and reversion of rights

Although the publisher obtains rights it should not be obliged to actually exploit them. The market may change, or quite simply, the publisher may not like the work. If this occurs, the contract should provide a means by which the publisher's flexibility is maintained and the artist is able to regain the rights that would otherwise be wasted.

(c) Delivery

It is fundamental that both publisher and artist discuss the delivery schedule. The publisher will have a production schedule and the artist will have to plan studio time for the project. More than many other art practitioners, illustrators often have to work to tight and inflexible deadlines. Time is often a fundamental term. It is therefore important that the contract also make provision regarding the late delivery of work.

(d) Alterations

Depending on the sort of illustrations required and the status of the artist, the publisher's power to make or to require alterations is often cause for dispute. The sample agreement below overcomes this problem by leaving the artist with control over any alterations which may be sought by the publisher, but leaves the publisher with the unfettered discretion as to whether it shall use all or any of the illustrations.

There are various approaches by which the concerns of the parties can be met. For example, some deals provide for the artist to deliver a range of works from which the publisher may, in consultation with the artist, select the works that it wishes to use. The publisher's preparedness to negotiate this issue will frequently depend upon the importance of the illustrator's role in the project.

ILLUSTRATOR -- PUBLISHER AGREEMENT

THIS AGREEMENT is dated the day of 19..... between

..... of(the Illustrator)

and

..... of(the Publisher)

whereby the Publisher wishes to retain the services of the Illustrator to provide illustrations for a book that it intends publishing entitled

`` '' (the Book).

1. The parties agree as follows. The Illustrator shall create and deliver to the Publisher illustrations for the Book. These illustrations shall consist of a cover design, end papers, 10 full page drawings and 14 spot drawings (the Illustrations).

2. Payment/Royalties. The Publisher agrees to pay the Illustrator as follows:

(a) \$..... upon signing of this agreement

(b) \$..... upon delivery of the Illustrations

(c) a royalty of per cent of the actual Publisher's receipts less returns and taxes.

3. Rights.

(a) Subject only to clause 5 of this agreement, upon payment of the fees mentioned in clause 2(a) and (b) above, the Publisher shall have the exclusive right to reproduce the illustrations in book form, without limitation as to time or territory.

(b) The Illustrator shall remain the owner of the property in the physical form in which the Illustrations are embodied. The Publisher shall return all originals promptly upon publication of the Book or within four (4) years from the date of this agreement, whichever is the earlier.

4. Exploitation. The Publisher shall be under no obligation to produce or release the Book, nor use all or any of the Illustrations in the Book, nor cause others to do so. Nor shall it be obliged to lease, licence or otherwise dispose of any of the rights in the Illustrations.

5. Reversion.

(a) If the Publisher fails to produce or release the book within four (4) years after receipt of the Illustrations (or cause others to do so), it shall, upon written demand from the Illustrator, re-assign to the Illustrator all rights in the Illustrations.

(b) Upon publication of the Book, the rights in any Illustrations which have not been included in the Book shall revert automatically to the Illustrator and the Publisher shall promptly return such works to the Illustrator.

6. Delivery schedules.

(a) The Illustrator shall submit to the Publisher preliminary sketches for all Illustrations by

(b) At the time specified in clause 5(i) the Illustrator shall also deliver one finished drawing showing the technique that he/she intends to use in the Illustration of the Book.

(c) These submissions shall be approved or disapproved within fourteen (14) days of delivery to the Publisher.

(d) The date for the delivery of all finished Illustrations shall be

7. Warranties. The Illustrator warrants that the Illustrations will

(a) be his/her original work;

(b) not infringe the copyright nor violate any other right of any person or party whatsoever;

(c) not be obscene, libellous or otherwise unlawful;

(d) be in conformity with the preliminary sketches and finished drawing, as approved.

8. Non-Delivery. If the delivery date is not met, the Publisher may either:

(a) grant such extension of the delivery period as it, in its sole discretion shall determine; or

(b) terminate this contract, whereupon the Illustrator shall return any fee already paid and shall remain the owner of the copyright and property in the Illustrations. In such event, the Publisher shall retain any rights that it may have against the Illustrator for breach of contract.

9. Alterations. The Publisher may request the Illustrator to make alterations to any or all of the Illustrations. The Publisher shall make no changes in any of the Illustrations without the written consent of the Illustrator.

10. Bankruptcy. If the Publisher is judged bankrupt or makes any assignment or arrangement for the benefit of creditors or goes into liquidation, all rights granted to it herein except those already exercised, licensed, optioned or otherwise disposed of as in accordance with the provisions of this contract, shall forthwith automatically revert to the Illustrator, except that the Publisher shall have the right to dispose of all copies of books containing the

Illustrations then on hand. Notwithstanding this reversion, the Publisher shall remain liable to the Illustrator for all unpaid royalties and other moneys due or which become due.

11. Assignment. No assignment of rights by the Publisher (other than to an affiliate or subsidiary) shall be binding upon the Illustrator without his/her written consent. The Illustrator shall have the right to assign any income hereunder and shall notify the Publisher of any such assignment.

12. Notices. All notices to be given hereunder shall be in writing and shall be sent by registered mail and shall be sent to the parties' address stated at the head of this agreement or such other place as may be specified in writing.

Signed by the Illustrator

Signed for and on behalf of the Publisher

2. Book Jacket Designers

The above discussion is obviously relevant to book jacket designers for often the illustrator of a text will also design its cover, but this is not necessarily so. There are a few specialist artists who now support themselves largely, if not solely, through their work for book jackets.

Because the design of the book's cover is so important in the marketing of the work, the publisher will wish and need to have continual involvement with its development and a high degree of control over the design. The roots of the specialist cover designer must be embedded in the marketing department. The cover is not so much a work of artistic liberty but is rather a selling tool. Thus contracts for book designers, when written at all, tend to give the publisher final control in all important matters.

The following example may be compared with the illustrator's agreement above. Of course, if the illustrator is to do the cover design as well as the illustrations, one would probably use a combination of the agreements. It must also be said that while such contracts are commonplace in Europe, England and the United States, few Australian publishers adopt such professional standards with their illustrators.

BOOK JACKET DESIGN AGREEMENT

THIS AGREEMENT is dated the day of 19 between

..... of(the Artist)

and

..... of(the Publisher)

whereby the Publisher wishes to retain the services of the Artist for the preparation of a design for a book jacket for ".....",

being a book that the Publisher intends to publish.

It is agreed as follows:

1. Subject. The design shall depict
2. Specifications. The design shall be in two (2) colours.
3. Delivery Schedule.

- (a) On or before the Artist shall submit to the Publisher preliminary sketches measuring
- (b) The Publisher shall notify the Artist within seven (7) days of receipt which if any of the preliminary sketches it wishes developed into a final design.
- (c) The Artist shall deliver the final design to the Publisher within days of such notification.
- (d) The Publisher may request the Artist to make minor alterations to the final design. Additional compensation shall be paid for such changes in an amount to be negotiated in advance. Except as provided in this clause, the Publisher shall not cause the finished design to be altered by any person other than the Artist, without the prior written consent of the Artist.

4. Warranty. The Artist warrants that the final design will be an original work and will not infringe the copyright of any other person.

5. Rights. All rights in the final design including copyright and property of the drawing itself shall vest entirely and exclusively in the Publisher. Without limiting the generality of the foregoing, the Publisher shall have the right to use the design on the cover of the book in any edition, whether in hardback or paperback; in advertising or promoting the book; or in exploitation of any of the so called merchandising rights that may flow from the book.

6. Credit. The Artist shall receive a credit as the creator of the cover design on the cover of the book.

7. Non-exploitation. In the event that the Publisher pays for the design but does not use it, it shall not be liable to the artist for its failure to do so.

8. Fee. The Publisher shall pay the artist the sum of \$..... within days of the delivery of the final design.

Signed by the Artist

Signed for and on behalf of the Publisher