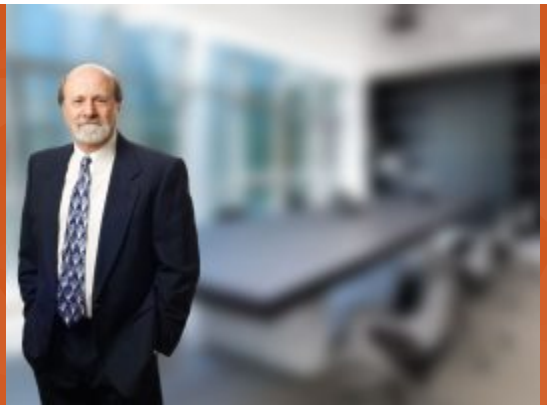
The Shy Writer's Guide to Successful Negotiation

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Every sale includes — or should include — negotiation. Yet many writers are poor negotiators. Unless you're making a super-novelists big bucks and can afford a lawyer, it's critical to your success that you learn how to negotiate.

I spend many hours each week negotiating, and I've identified four (or so) components to successful negotiations: *validation*, *knowledge*, *win/win philosophy*, and *nonconfrontational techniques*.

Pillar #1. Validation

The first component, and for many people the most critical one, is accepting that negotiation is o.k.

There are cultures in the world where, if a merchant makes you an offer, it's an insult to accept without haggling. Though this attitude may never prevail in the U.S., writers must appreciate that there is nothing shameful or unseemly in questioning the terms being offered, or asking for more.

Perhaps writers worry they'll kill the deal. After toiling for years in the vineyards of obscurity, they fear that if they dare to ask for more, the editor or publisher will be upset enough to retract the offer. So be advised: That should never happen, certainly not if you adopt a constructive negotiating attitude (pillar #3) and nonconfrontational techniques (pillar #4).

Finally, if a publisher or editor says to you, "no one ever complained about that before," remember the following:

- **You're not complaining**, you're negotiating (unless you are complaining, in which case don't).
- **It's not true**. If you have questions, someone else has, too.
- **It's irrelevant**. You'd be foolish to accept something that makes no sense to you.

In short, asking for more, or at least for an explanation, is perfectly proper and should not cost you a sale.

Pillar #2. Knowledge

The second component to successful negotiation is understanding the needs and interests of your "opponent," your own wants and requirements, and the legal and business environment.

Only by having a clear view of your own and your publisher's needs and desires will you be able to determine what you must have, what you can afford to relinquish, and what compromises may work for your publisher. A publisher once accepted a short essay I'd written by sending me a "copyright release" – which actually would have transferred all of my rights to this publisher without compensation. I had known this was a nonpaying market, but I hadn't anticipated I'd be asked to give up all rights in my article forever without being paid a cent. Finding this unacceptable, I changed the wording of the release (by hand) so that instead of transferring all rights, I instead assigned the publisher the right to publish and reprint my piece for any purpose. I sent this back to the publisher with a cover letter indicating that, since this gave the publisher the right to reuse my piece however it wished, I assumed this would be acceptable. It was, and the form as I marked it became my standard contract for all of subsequent submissions to that market.

In addition to appreciating both sides' needs, you must understand standard monetary terms (including advances, payment terms and royalty rates), rights customarily granted and withheld, and the like. Where do you get that information? Good sources include:

- Books and magazines, such as *Writer's Digest* and WD's annual *Writer's Market*, the *National Writer's Union Guide to Freelance Rates & Standard Practice* (both WD books) and *The Writer's Legal Guide* (Allworth Press);
- Writer organizations, such as the Authors Guild (29th Floor, 330 W. 42nd St., New York City 10036, tel. 212/563-5904, fax 212/564-8363, email staff@authorsguild.org) and the National Writers Union (6th Floor, 113 University Place, New York City 10003, tel. 212/254-0279, fax 2121/254-0673, email nwu@nwu.org)
- Other writers, especially those writing for similar markets
- Professionals, such as publishing lawyers and agents.

You can't begin to evaluate a deal if you don't understand what deals are being offered to others.

Finally, you must understand the legal environment in which writers operate; you must have at least a bare bones grasp of contracts, defamation, privacy, negligence and, most critically, copyrights. Though a general discussion of these topics is beyond the scope of this article, it's important for nonfiction writers to understand that if they are careless, criticize without justification, or expose confidences, they maybe exposing themselves and their publishers to legal liability. (For a discussion of these issues, see my "Your Best Defense," in the October '93 *Writer's Digest*.)

It's especially important for all writers to understand that copyrights — the federally-created, exclusive rights to reproduce, modify, distribute, and publicly perform and display — arise automatically in their original works, and unless they are the publisher's employees, writers own these copyrights. (See my "Questions and Answers About Copyrights" in the May '96 issue of WD.)

Pillar #3 Win/Win Philosophy

Trials like the O.J. Simpson case, are examples of prosecution and advocacy, not negotiation. In the trial "game," generally one party wins, the other loses. Either O.J. is convicted or acquitted.

That's not the right approach to negotiation. To keep tension to a minimum, and preserve good relationships with editors and publishers, try a "win/win" approach — that is, if confronted with a contract term that seems wrong or unfair, try to understand what you and your publisher really need, then craft a solution that satisfies both as much as possible.

My above copyright release tale is a good example. I knew what I wanted: my essay published in

this market, while retaining the right to reuse it at a later date (for example, reprinting in another magazine, perhaps eventual inclusion in an anthology). I could guess what the publisher wanted: the right to publish my piece, to reprint it at a later date, and perhaps to distribute it electronically, all without having to pay me or renegotiate for additional rights. I also assumed that the publisher didn't need to prevent me from using my piece after its initial publication. Because I understood both my needs *and* the publisher's, I could structure a compromise that gave each of us what we really wanted. An easy win/win.

Other principals follow from this philosophy, including:

- **Be creative**: The best compromise may not be obvious. Use your knowledge (pillar # 2) and imagination to devise solutions that work for you and your publisher – whether or not anyone has done them before. Remember that copyrights are infinitely divisible: You can divide by right (a license to publish, but not to perform); time (exercisable for two years, then reverting to author); geography (in North America, not elsewhere); format (hard copy, but not electronically); market (scientific and medical journals only); etc. There are truly few situations where two creative, reasonable negotiators cannot find a compromise that satisfies both.
- **Prioritize**: Learn to separate the wheat (publications, opportunities and contract provisions of significance) from the chaff (opportunities and contract terms that don't matter enough). As a wise man once said, "Fight to the death for the things you believe in; but keep those commitments to a minimum." *Translation*: Prioritize your needs and focus your energy on what really matters. Ignore — at least don't get sidetracked by — things that don't matter. The standard book publishing contract will have 100 offensive points. This is inevitable: Publishers' lawyers work these contracts over time and again, routinely strengthening it for the publisher's sake. So unless a point really matters, don't waste good will or psychic energy on minutiae.But that maxim also means this: If you can't reach acceptable compromises on major points, don't accept an awful deal. Only by being prepared to walk away can keep your integrity and insure that you, and other writers, eventually get what you deserve.

But even a properly focused win/win, philosophy is not enough. You also need a repertoire of techniques.

Pillar #4. Non-Confrontational Techniques

The best seller lists are full of book teaching the art of negotiation. This article can only scratch the surface (and perhaps motivate you to study those books). Still, because many writers hesitate (to the point of timidity) to negotiate with publishers, let me suggest several strategies to avoid discomforting confrontation, or panicky acquiescence.

- **Plan**. Determine in advance how you'll identify problem issues, raise questions, and make your points in ways that feel comfortable to you. You must be able to deliver clear messages to the editor, and preserve a good working relationship.
- **Question**. One safe approach is to start by asking questions: "Why do you need that?" or "I don't understand that provision, could you explain it to me?" It's surprising how often editors themselves don't understand the meaning of a clause. Once, a prominent publication presented me with its new "standard" contract, which turned out to contain a "works made for hire" clause in which the author agreed that the publisher owned all rights. I found this objectionable; but when I asked the editor to explain what the clause meant, to my amazement she thought it was simply to permit the publication to use the piece initially and in reprints. She had no idea that the clause took all rights from me and granted them, forever, to the publisherAsk "Can you do any better than that?" Amazingly, the answer often will be "Yes." For example, a legal article I had written was accepted by a professional publication which did not pay authors. So I asked for, and received, a free three-year subscription. If you don't ask, you may be leaving behind money or rights that would have been readily conceded.

- **Don't demand**. Once your questions have been answered, and it's time for you to state your position, rather than insisting on a change try using phrases like: "I was hoping for …" "I was thinking more in terms of …" "I feel that I will need."
- **Don't cave**: Be prepared for editors to pressure you, and plan in advance what to say to avoid either overreacting or conceding too early. Use phrases such as "I really need time to think about that," "I'll have to discuss that with my [spouse, lawyer, etc.]," or, if you are being intensely pressured, "Sorry, but I don't do business this way." Don't get stampeded into accepting a condition that bothers you.

Flexibility and creativity are often the keys to success, and these take time. For example, in a recent negotiation my client and her publisher were stuck on movie rights: The publisher wanted them indefinitely, since it viewed them as potentially the major source of revenue from the finished work. The author (and I, her advisor) wanted the publisher to devote its efforts to successfully publishing the book, not to agenting movie rights. After a lengthy negotiation, we finally devised a compromise modeled after the typical out-of-print clause: The publisher received a three-year exclusive on audiovisual performance rights. If after three years it could not demonstrate its continuing diligent efforts to sell movie rights, the author could demand reversion of those rights.

- **Consider the pen**: If you have trouble advocating for yourself, and you fear you will likely cave in before you even state your position, consider negotiating in writing. Though it may feel like a cop-out, recognize that as writers we generally feel the greatest comfort, and can wind up with the greatest success, if we state our questions and positions in writing.

Pillar #5. Get It In Writing

The lawyer in me can't resist adding a fifth pillar: Get it in writing. If it was important enough to discuss, it's important enough to confirm. If you can't get the editor to sign an agreement, follow up with your own confirmation letter. It should be friendly, but make the point that you and the publisher agreed to certain terms. This way, if a problem arises you have evidence of where (at least in your mind) negotiations led.

Writers who realize that negotiation is o.k., who understand the commercial environment and each party's needs, who deploy thoughtful, non-confrontational techniques to achieve a mutually satisfactory result, and who remember to capture their important understandings in writing, will maximize their success, rights, income and self-respect as a writer.

A definite win/win situation.

If you would like to discuss negotiation issues, please feel free to contact **Howard G. Zaharoff**.