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# The State of the Book Business in the U.S. and Abroad: A Trans-Atlantic View

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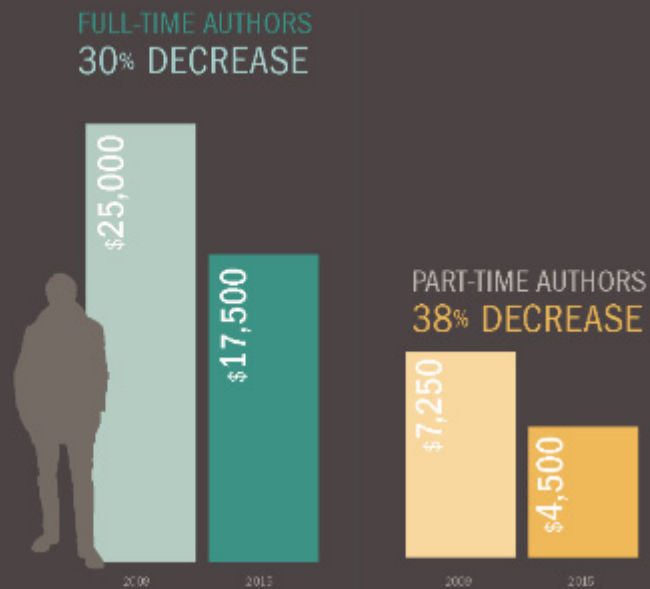
# THE WAGES OF WRITING

KEY FINDINGS FROM THE AUTHORS GUILD  
2015 MEMBER SURVEY



# THE WAGES OF WRITING<sup>2</sup>

AUTHORS' INCOME IS DOWN ACROSS ALL CATEGORIES.



Writing-related income of full-time book authors dropped 30% since the 2009 survey, from \$25,000 to \$17,500. Part-time authors saw an even steeper decline, as their writing income dropped 38% over the same period, from \$7,250 to \$4,500.



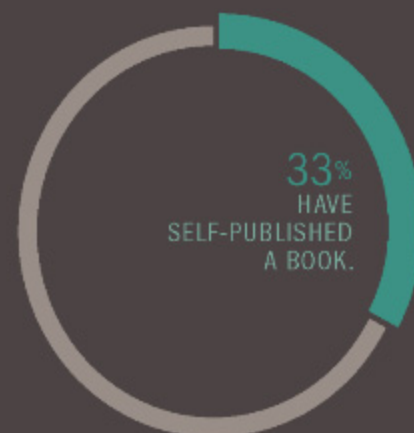
MOST AUTHORS CAN'T SURVIVE ON WRITING ALONE.

ONLY 39% OF AUTHORS  
SUPPORTED THEMSELVES  
EXCLUSIVELY THROUGH  
WRITING-RELATED WORK.



THE NECESSITY OF WORKING SUPPORTING JOBS  
CUTS INTO THE TIME AUTHORS WOULD IDEALLY  
SPEND ON WRITING PROJECTS.

AUTHORS INCREASINGLY TAKE A “HYBRID”  
APPROACH TO PUBLISHING THEIR BOOKS.



Of the authors surveyed, 33% have self-published a book. It appears that authors increasingly feel they have a choice of whether to go through a traditional publishing house or taking the indie route on a per project basis. And, we suspect, authors are starting to see self-publishing as an outlet for projects that haven't been supported by traditional publishing houses.



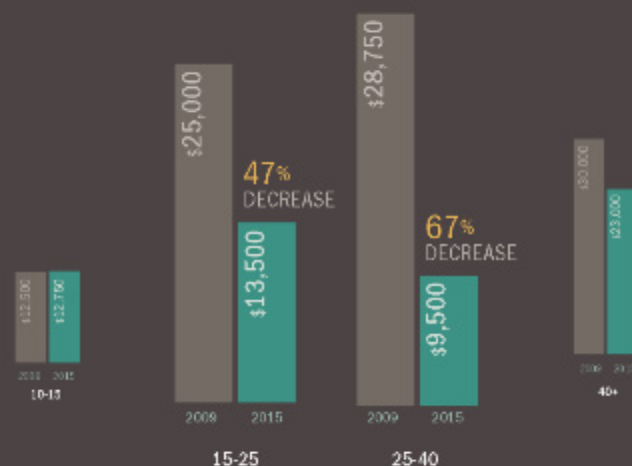
AUTHORS SPEND MORE TIME ON MARKETING,  
LESS ON WRITING BOOKS.



AUTHORS' TIME SPENT MARKETING  
AND COMMUNICATING WITH READERS  
SKYROCKETED 59% SINCE 2009.

Traditional publishers' promotional budgets have all but dried up, and many publishing contracts now **REQUIRE AUTHORS TO MAINTAIN A WEB AND SOCIAL MEDIA PRESENCE.** Many authors, both traditionally- and self-published, have proven adept at using new technologies to connect with readers.

FULL-TIME AUTHORS WITH 15+ YEARS OF EXPERIENCE  
SAW THE GREATEST INCOME DECLINES.



AUTHORS' INCOME WITH EXPERIENCE

The survey also shows, for full-time authors, writing-related income generally increases with experience; but when the market contracts, they see the biggest losses. In the new economy, it appears that experience isn't translating into rising income.



# Causes of income decline?

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A confluence of factors:

- Royalties have dried up: course packs, excerpts, full-text digitization, library replacements.
- Information (i.e., content) wants to be free mindset, and overly expanded fair use
- Increase in digital piracy
- Consolidation within traditional publishing industry
- Amazon's retail dominance: artificially low e-book prices, shuttering of many brick-and-mortars



# Potential for the Power to Shift to the Author

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- “Authors are realizing that they are CEOs of their own global media empires, and it’s up to them to decide who to partner with.”

— CJ Lyons,  
Authors Guild Council



# Results of the Digital Explosion

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- Chasing the long tail: the backlist and out-of-print (OOP) have renewed life.



- Authors are in a position to exploit their OOP traditionally published works themselves.



# Fair Contract Initiative

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- “Shine a bright light on the one-sided contract terms” publishers offer authors.
- Ask authors to just say “no.”
- Raise awareness; create discourse.
- Meet with publishers and agents.
- To come: Tackle other types of publishing agreements:
  - Self-publishing agreements (KDP)
  - Translator agreements
  - Freelance agreements



# Issues in Standard Traditional Publishing Agreement

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- **E-book royalties:** should be at least 50%.
- **Term of license:** should not be forever.
- **Out of print clauses:** should be real.
- **Acceptance clauses:** should not be a matter of whim.
- **Advances:** must be paid in “advance.”
- **Indemnities:** Publishers should share legal risks.
- **Non-compete clauses:** must not restrict author’s ability to write and publish.
- **Options:** must be fair and paid for.
- **Author approvals:** Author should have final say on cover art, title, edits, etc.
- **Payments:** at least quarterly; more transparent accounting.
- **Deep discounts:** “Special” book sales should not be at author’s expense.



# The E-Royalty Rate Should Be 50%

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Some rare authors are negotiating better e-royalties

- Most-favored nation clauses: automatic renegotiation
- Non-disclosure agreements for bestsellers
- 50-50 split with no advance
- 50% after 10,000 copies sold



# License term – why life of copyright?

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## One New Model:


- Gregory David Roberts – deal with Grove and Zola Books using The Everywhere Store widget
- Print
  - 5 year license
  - 50% profit share
  - Approvals over cover and most other facets of publication
- E-books
  - 3 year license for e-rights
  - 70% of GROSS
  - Approvals over cover and most other facets of publication



# Out-of-Print Reversions

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On-Demand a double-edged sword:

- There are many ways to re-publish and make money, *if* you can get rights back.
- 
- But, availability of on-demand copies (both e-files and POD) allows publisher to get around “out-of-print” or “reversion” provisions.



# Out-of-Print Reversion

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- What is “Reversion”?
  - A second bite of the apple
- Theory: When the book goes “out of print,” the author gets the rights back.
  - Designed to spur publisher to keep the work selling for as long as is profitable for both parties.
- Reality today: Just try...
  - More important than ever to pay attention and negotiate the reversion clause.
  - Rights should revert when publisher ceases to actively sell book.



# Sample Reversion Clause (i)

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- If, after **three years following the date of publication of the said Work, we advise you** (in a letter addressed to you at your last known address) that we intend to discontinue publication, or if we **fail to keep the Work in print** and neglect to reprint it or license an edition within **nine (9) months after your written request that we reprint the Work**, then you have the right to terminate this Agreement **by written notice to us**. We shall, within three (3) months of receipt of such request, (a) declare in writing our intention to reissue an edition of the Work, and reissue the work within nine (9) months, (b) enter a license providing for the publication in the United States of a new edition of the Work, or (c) return to you all rights granted to us herein except those rights granted to third parties prior to the receipt of your notice and in effect at the time of termination...**The Work shall be deemed “in print” as long as copies in an English-language edition are offered for sale, excluding print-on-demand.**



# Reversion Clauses: Issues

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- Big issue: Meaning of “out of print” or “in print”?
- Length of time since book published before can be deemed out of print.
- How long does it have to be “out of print”?
- Publisher provides notice or does author notify publisher?
- How does author provide notice of desire to get rights back.
- Can publisher override notice by bringing back into print?



# The Good Clause: Defining “In Print”

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- Measures for defining when your book is “in print” when:
  - certain earnings levels are reached – e.g. \$500/year; and
  - copies are available and offered for sale in the United States in an English language edition issued by your publisher; and
  - the book is listed in your publisher’s trade catalog.
- Bottom line: Need objective measures of determining if publisher actively selling and marketing the book.



# The Option Clause: Wreaking havoc on careers

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- First dibs on your next book
- Prevents open market auction

## Bad Option Clauses:

- Require submission of completed manuscript.
- Give publisher too long to decide.
- Apply to a different genre –whether or not publisher has expertise.
- Give publisher right to buy the Option Work “on the same terms” as the first work.
- Give publisher “last refusal” rights.



# Option Clause Horror Stories

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- Ten years without compensation while writing research-intensive nonfiction book.
- Publisher niches: romance novelist publishes non-fiction book with new publisher; is tied in for the next book—a romance novel.
- Can prevent an author from being able to sell her next book in timely manner.





# The Option Clause

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OKAY:

- Next work in same genre (e.g., of fiction for children or young adults) before submitting the same to other publishers.
- Publisher gets **thirty days from** receipt of a **detailed proposal and/or a sample chapter to make an offer.**
- Author can submit the proposal any time.
- Author can reject offer and go elsewhere.



# Delete the Non-Compete

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- Non-fiction specialists can be prevented from publishing another book.
- Novelists, too: characters developed for multiple works.
- The non-compete has no place in fiction, including for prequels and sequels and author-created characters.



# Delete the Non-Compete

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- Authors are routinely asked to agree not to publish other works that might “**directly compete with**” the book under contract or be “**likely to injure its sale.**”
- Even more broadly, they may be asked not to “**publish or authorize the publication of any material based on the Work or any material in the Work** or any other work of such a nature such that it is likely to compete with the Work.”



# Delete the Non-Compete

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- U.S. law disfavors non-competition agreements that limit an employee's right to practice a trade and earn a living.
- Louisiana cookbook author cannot be prevented from publishing another Louisiana cookbook.





# Delete the Non-Compete

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- BAD: Subjective standards; overly board.
- Such as: “Author will not publish with any other publisher any work on the same subject, in any media format, which might conflict with the sale of this Work in the Publisher's sole judgment.”





# Delete the Non-Compete

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- OKAY: Clearly defined and limited.
- “The Author will not publish another romance novel using the same characters and dealing with the same subject that is intended for the young adult market.”
- “The Author will not publish or produce a Work that is specifically intended to supplant this Work in the marketplace.”



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