

Rethinking the Contract: The Global Fair Contracts Initiative

For María Fernanda Mendoza

What was their situation before digital publishing?

Basically, the same all the way from Mexico to Argentina:

1. Authors weren't aware of their rights,
2. Contracts were made by word,
3. Publishers demanded all the rights for all modalities known or to be known,
4. The number of authorized copies wasn't clear because the agreement was based on a certain period of time, instead of a certain amount, and
5. Author's didn't really know how many copies of their work were actually sold.

15 years later, what has changed?

Nothing.

Authors still don't know their rights.

1. Now they sign contracts in terms they don't understand,
2. Publishers now also want the digital rights,
3. It isn't clear whether if what is sold are physical copies or downloads, and
4. Obviously, authors continue ignore how much they're going to be paid, and what for.

I've been giving copyright courses for a while now, and whenever my students ask me what the best contract is, I always answer the same: the one that satisfies both parts.

There is an obsessive need from some publishers in Latin America to have every right, to every use, to every modality, in every language, everywhere.

And of course this creates big expectations in authors' minds, which only interest is to be read, but the big question is: Do publishers really have the interest and capacity to fulfill this promise?

Surely, there will be some that can; but, in my opinion, most of them can't and don't even want to; because it's not their market or their territory, or because it is a book that continues to be sold as a paper book. So, I ask myself: Why should they ask for all those rights? Why deny the authors the possibility to negotiate with other publishers?

Digital era offers a marvelous window of opportunities to creators, and not only in the book industry. But, I insist, as long as authors aren't aware of their rights, they can hardly know what for and how to negotiate. And a very important aspect in order to strengthen their position is the alliance with other authors.

These is what I see here, today, and that, unfortunately, does not happen in Latin America.

Finally, it doesn't matter how long a contract is, it will always be better than leaving it to a judge's interpretation.