An editor's insider secrets for selling every word you write.

The Freelance Success Book

CHAPTER ONE

THE WRITING ITCH AND WHAT TO DO ABOUT IT

- **Self Test: Do I Have What It Takes to Be a Freelance Writer?**
- **Self Test: Am I Ready to Go Full-Time as a Freelancer?**
- **What's It Like to Be a Full-Time Writer and Editor?**
- **Should I Quit My Daytime Job and Write?**
- **Is a College Degree Necessary for Success?**
- **How Do I Prepare for a Writing Job Interview?**

Permit me to answer a question that likely dwells in the back of your mind, hidden like an intruder in the dark, ready to pounce: "Do I have what it takes to be a writer?" It is my absolute pleasure to assure you that, yes, by virtue of being a person of normal intelligence, ambition and drive, you do indeed have what it takes. I base that knowledge on 24 years of teaching aspiring writers and supervising professional ones.

It's true: If you want it, you can have it. You don't have to be born into a literary family, to have attended college (indeed, college can hurt your writing in several ways), or to have had a traumatic

childhood that turned you inward. You just have to want it—then go out and get the knowledge and skills that let you do it.

And, by the way, that question about having what it takes? It's also my experience that only those who do indeed have what it takes ever ask the question in the first place.

SELF TEST: DO I HAVE WHAT IT TAKES TO BE A FREELANCE WRITER?

What's in a name? In this case, it's about 10 things that successful freelance writers have in common. How do you stack up? Note: This is not a timed test and the results will not appear on your permanent record.

Please answer "yes," "no" or "coming soon" to each of the following questions.

1. I own a computer, printer (laser or ink-jet, not dot-matrix) and professional word processing program.
   - ❍ yes
   - ❍ no
   - ❍ coming soon

2. I own a market book for my genre (*Writer's Market*, *Novel and Short Story Writer's Market*, *Online Market*, etc.)
   - ❍ yes
   - ❍ no
   - ❍ coming soon

3. I have identified the publications I want to write for, subscribe to them, own recent back issues, or visit them regularly online.
   - ❍ yes
   - ❍ no
   - ❍ coming soon

4. I have designated a specific time during which I write at least five days a week.
    - ❍ yes
    - ❍ no
    - ❍ coming soon

5. I write in a workplace that I have set up especially for writing.
    - ❍ yes
    - ❍ no
    - ❍ coming soon

6. I frequently use the Internet as a research tool.
    - ❍ yes
    - ❍ no
    - ❍ coming soon

7. I have my own letterhead and business cards.
    - ❍ yes
    - ❍ no
    - ❍ coming soon

8. When writing, I regularly use my own dictionary, synonym finder, grammar and usage guides specific to my genre.
    - ❍ yes
    - ❍ no
    - ❍ coming soon

9. I have discussed my writing ambitions with my significant others.
    - ❍ yes
    - ❍ no
    - ❍ coming soon

10. My goal is to write, not just to see my name in print.
    - ❍ yes
    - ❍ no
    - ❍ coming soon

Scoring Guide

- 8-10 yes. You have overcome the basic obstacles to freelance success: finding time, making a clear commitment, getting organized and getting wired. Put on some coffee. Crank up the tunes. And tell editors to watch their in-boxes.

- 4 to 7 yes. How does it feel, sitting on that fence? Just testing the waters? That's fine. Take your time. But at some point know that a commitment must come. At some point, a reckoning with the heart must take place. Use the tools in this book to make a firm decision, yea or nay. And remember: the key to making any decision work is what you do after you make it. Be firm, be committed to the direction you've taken, never look back.

- 0 to 3 yes. You're just starting out. That's fine, too. Hopefully it's clearer now that there are important differences between writing as a hobby and writing as a profession.

Comments

1. Deduct a half point if you share your computer with family or others. If you're going to write professionally, you need your own tools, not borrowed ones.

2. The first time you buy one of these books you quickly realize that you must find your niche in the freelance world. That means two things: (a) identifying and nurturing your areas

of expertise and interest; (b) immersing yourself in that specific world.

3. Understanding and writing for specific publications is the key to success. Although we all start with the dream of "being a writer," that grand dream can quickly turn into a grand illusion unless we learn to shape our writing for a specific outlet—whether a group of similar magazines, a book genre or TV show format. Each has its own "code" that you must break before publishing in it successfully.

4. and 5. Discipline. All writers struggle with it to some extent, and the struggle is never over. But it does become more of a nuisance than a roadblock. Like the urge some mornings to skip brushing your teeth. You may be tempted, but you know the outcome of your laziness will stink.

6. As an ad for the *Washington Post* says, "If you don't get it, you don't get it." The Internet is the most important advance for freelance writers since postage stamps.

7. At some point, you're really gonna wish you had these, although they may seem vain and superfluous to you now. I promise that some day you will be embarrassed that you don't have them, and then you will go out and get them immediately after.

8. Again, every profession has its tools. Your toolbox must include these and more. And forget Roget's. Use J.I. Rodale's *Synonym Finder*.

9. Same goes for getting on a weight-loss diet: It's not real until

the world knows about it. You need to identify who supports you and who doesn't. Don't be surprised at who ends up in the second category.

10. The thrill of seeing your name in print wears off after it happens a few times. What will replace that motivation when it does? Hopefully the answer has something to do with the satisfaction of practicing your craft and the importance of using writing to help make sense of the world, yourself, and your place in it.

SELF TEST: AM I READY TO GO FULL-TIME AS A FREELANCER?

Tired of being a wage slave? Ready to spread your wings and fly free? Without medical benefits and guaranteed paydays, it can be a long way back down to earth.

I forget the exact moment I suffered an entrepreneurial seizure and decided that, for now and forever, I wanted to own the products of my labor, set my own hours, write what I wanted to write and answer to the only boss who mattered—the one inside my heart.

It must've been during one of those blurry, post-Ayn Rand moments late at night or early in the morning, because giving up tenure, retirement plan, paid vacations, family-emergency leave, tuition assistance, expense account and a sabbatical every few years was definitely a decision that came from the gut, not my certified financial planner.

Oh well. What's done is done, and if you don't believe me, just look at my bank account.

But here I am, writing what I want to write, free of that spiritual jail called a corporate office. Is it worth it?

Without a peso of doubt.

Only one regret: I wish someone had made me complete the following checklist first.

Full-Timer Self Test

Please note: The results of this test will definitely appear on your permanent record.

Please answer "yes" or "no" to each of the following questions.

1. I write five or more days every week, without prompting, without fuss, and I find doing it significantly more rewarding than my current job.
   ❍ yes ❍ no

2. I can write at least one feature article, one book chapter or one well-researched query letter per week.
   ❍ yes ❍ no

3. Currently, my work is being accepted at least as often as it is being rejected.
   ❍ yes ❍ no

4. I work regularly with at least one editor.
   ❍ yes ❍ no

5. At least one editor has called me to initiate an assignment.
   ❍ yes ❍ no

6. Last year as a writer, I earned at least one-third of my present salary, or $6,000, whichever is higher.
   ❍ yes ❍ no

7. I have set up a writing business that includes an accounting system, office equipment, tax filing and business stationery.
   ❍ yes ❍ no

8. As liquid financial reserve, I have saved at least one year's salary that is not invested in a tax-exempt retirement account.
   ❍ yes ❍ no

9. I have written a one-year business plan that includes a full accounting of projected expenses, revenues and contingency plans.
   ❍ yes ❍ no

10. My family/significant others are fully aware of my desires to work full-time as a freelancer and have pledged to provide their moral and emotional support.
    ❍ yes ❍ no

Scoring Guide

If you answered "no" to any items other than 7, 9 or 10, it is my opinion that you are not yet ready to go full-time as a freelancer. Here's why:

Comments

1. If you're squeezing in time during a hectic schedule to write, that's wonderful; it shows discipline and commitment. But doing it full-time is going to mean sitting in front of a computer screen researching, composing and editing for 8 to 12 hours a day, often more. You had better find it not just rewarding, but the very lifestyle you wish to lead.

   I knew I was ready to go full-time when I started stealing time from my job obligations to write, when I would rather write than work out, when I would rather write than, well, almost anything. If writing is something that you're having to force yourself to do, you should wait and see how that situation resolves itself. It's probably just a matter of time before

you hit your stride, get some bylines and all the confidence that comes with them.

2. This item is about productivity. A cruel calculus is at work: When you first begin, if you take the number of hours you need to produce a finished piece and market it, then divide that number by your payment, you'll get your new hourly wage. Don't be surprised if it's $15 per hour or less. When you're working at those rates, you had better be able to crank out copious amounts of copy. One feature article, chapter or query per week is probably a minimum if you're going to be financially self-sufficient.

3. Rejections will always be a part of freelancing. There will forever be reasons beyond your control why your work was not selected by that particular editor, on that particular day. But before you go full-time, your rejections should be well within the acceptable range: For most full-time freelancers, the rejection rate is lower than 50 percent. The reason why is contained in the next two items.

4. Before making the leap, you need to have at least one foot planted firmly inside an editor's door. Working regularly with an editor means you've found a home for your expertise, your style, your personality. You fit. You belong. You've got everything it takes. And if you can do it with one editor, you can do it with others. Also, by not sending in cold queries and manuscripts, you will lower your rejection rate significantly.

5. Of course, one sure-fire way to reduce rejections is to get an assignment directly from an editor. And that's exactly what

happens once your name begins appearing regularly in print within a specific genre—one more argument to focus on being a specialist when you're starting out.

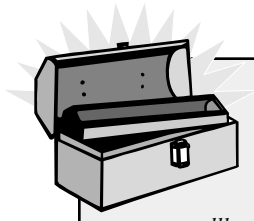
6. If you're making this much money doing it part-time, you've got the skills and the contacts that will enable you to take your business to the next level. Don't cheat on this number. There are going to be good years and lean years. Be ready for one, surprised by the other.

7. OK, so you're a sloppy accountant and you don't have business cards. That doesn't bother me because I know that once you start writing as a full-time professional you'll treat it as a business, not a hobby—or you won't be doing it for long.

8. Plans and promises—When you're a self-sufficient businessperson you'll be shocked by how empty the promises of others can be. If you're like me, it's going to take a few hard lessons before you learn to tell the frauds from the real thing, and to develop the hard edge it takes to be an independent businessperson. In the meantime, I bet you'll count on projects and people who fail to come through for you. Guess what? Your mortgage company doesn't take excuses or sob stories.

9. Same as 7. I highly recommend the free resources offered by the Small Business Association and on the Internet (see toolbox).

10. I debated whether or not to make this a requirement. If I had written this while still a corporate slave, it would've been required. But now—hey, if you gotta do it, you gotta do it. In the meantime, hope for their acceptance, praise and sup-



WRITER'S TOOLBOX
ONLINE BUSINESS RESOURCES FOR FREELANCERS

- *www.allbusiness.com* — The self-styled "Champions of Small Business" provide 10 info-rich sections of articles, tools and forms—all for free.
- *www.bizmove.com/starting.htm* — Their "Small Business Knowledge Base" is a comprehensive free resource of small business information with guides, tools and techniques.
- *www.homeofficemag.com* — Articles from the company's HomeOffice magazine.
- *www.officedepot.com/BusinessTools/sbh/* — As if you needed another reason to shop there, OD's "Small Business Handbook" is a treasure.
- *www.smallbusinessbc.ca/ibp/index.html* — Don't miss this interactive workshop on preparing your business plan. A service from the experts at the British Columbia Business Services Society. Free, eh?
- *www.soho.org* — Another rich collection of freely accessed article archives, from the Small Office Home Office advocacy group. Good stuff.

port—sure does make things easier. Bottom line: nice but not essential.

WHAT'S IT LIKE TO BE A FULL-TIME WRITER AND EDITOR?

"I'm interested in preparing for a career in journalism, and I'd like to ask you a few questions. What are the greatest rewards and disadvantages? What's the best way to prepare for a writing career? What is the most important trait one needs to be successful? What do you do when you get writer's block? What influenced

you to become a writer? What is your weekly salary? What are the most important workplace skills? What related skills should I learn? Will writers be in demand when I graduate from college in 2006?"

Thanks for your many and varied questions. They provided a chance for me to stop and reflect about big-picture things that are important and that we sometimes lose sight of.

Greatest Rewards

Reveling in words. Seeing their effects on others. Making a positive difference in a reader's life. Feeling the rewards of being a professional. Fulfilling one of the most ancient roles in any culture: scribe for the tribe.

Greatest Difficulty

Overcoming the growing disrespect and cynicism generated by the shameless pandering of some mass media.

Best Way to Prepare for a Writing Career

At the academic level, the answer is easy:

1. Take the most difficult English track your school has to offer.

2. Commit to a personal reading enrichment program that includes a good newspaper, news magazine, popular fiction, great works, history and biography.

3. Write something every day without thought to style or grammar. Listen to your inner voice and capture the free flow of thought on paper or computer screen. Write as fast as you can without stopping for 15 minutes. Every day.

4. Seek out internships at newspapers, magazines or anywhere professionals writers are practicing their craft. Do ANYTHING to be there with working professionals.

5. Become the editor of your school newspaper or yearbook. Don't be satisfied with writing for them.

6. Go to the best liberal arts college you can get into. Don't go to J-School unless it's for a graduate degree.

Essential Trait for Success

An unquenchable desire to discover the truth and tell others about it, no matter what.

Writer's Block

Professional writers don't get the emotional type of block. They've learned to prepare properly, to control their writing environment, and they've developed tricks that allow them to plow through the rough patches.

Motivation to Become a Writer

I don't believe writers have any more choice about what they do than a sociopathic ax murderer does. I truly believe genetics and early experiences determine whether or not you get saddled with the compulsion to write. Sure, technique must be taught or gained through trial and error. But if you're going to write, nothing stops you. Not even the idiosyncratic advice from people like me.

Salary

The magazine *Folio*: publishes annual salary averages for all magazine positions by circulation size and geographic location. That would be more helpful to you. Pay rates for freelance writers can be

found on the web site of the National Writer's Union (*www.nwu.org*) and in the book *Writer's Market* (Writer's Digest Books).

Workplace Skills

Respect and courtesy at all times, in all situations. Don't dwell on the negative. Assume the best about others, until proven otherwise. Focus only on those things in the workplace that make a positive difference. The rest is a waste of time and energy—and usually hurt your chances of getting ahead.

Important Related Skills

Ultimately, success is about marketing. And that is being done more and more via the Internet. Computer skills—Quark, Word, Adobe Photoshop and Acrobat, Excel, scripting in html, Perl, cgi, php, etc.—are becoming mainstream for today's writers and editors.

Demand for Writers in 2006

The Internet is already exerting a powerful influence on every aspect of publishing. It is creating more, not less, work for writers and editors, online and offline. Understand the Internet and web, know how to write for them, know how to research on them, know how to use them to market yourself and your writing.

SHOULD I QUIT MY DAYTIME JOB AND WRITE?

> *"I am one year out of undergrad and have been working in the financial services industry since graduation. But I hate it and am looking for a major career change. All I've ever consistently enjoyed has been writing. I would like to break into a career in publishing or editing, but I don't know how well received I'd be with so little experience. What would be the best way for me to get a foot in? I am very confident about my writing abilities, but I have*

nothing to show for it (aside from dozens and dozens of poems I've written and a few short stories). Thanks!"

One of your statements makes me believe that you will find what you're looking for—a job where writing earns you a living: "All I've ever consistently enjoyed has been writing." Whenever I've heard a student say that, almost invariably it has meant that person was born to write and probably won't be happy until he or she is doing it in a serious way.

I am not kidding you. I taught fiction and creative nonfiction for 15 years to, literally, 1,000s of students. I came to the conclusion that, yes, there are people who, for some reason, have to write or they won't be happy. Understanding that about yourself, honoring it, giving in to it—that's the hard part. The rest is standard practical advice.

The only other thing I would add is this: Find a mentor. Shorten the learning curve by working with a professional coach or trainer. He or she will more than likely tell you:

- What you need is practical training and clips, lots of clips.
- Be prepared to spend time learning the basics of the type of writing you want to specialize in.
- Gradually build your clips (bylines) from better and better magazines, newspapers, copywriting projects and so forth.
- Once you're making approximately one-third of your present income as a freelancer, you'll have the skills and contacts to make the jump to full-time.

IS A COLLEGE DEGREE NECESSARY FOR SUCCESS?

"I'm a 25-year-old car enthusiast living near Houston,

TX. I would love to make a living writing articles for automobile magazines. I'm college educated and I think I have a great knack for writing. But, I'm not formally educated in writing or journalism (I have a business degree). How can I break into this industry? Would going back to school and getting a journalism degree be the only way?"

First, forget going back for a second degree in journalism. Higher education is highly overrated. Second, some good news: You've spent time and energy developing an expertise in a specialty, and the trend in today's magazine market (online and offline) is more and more toward vertical titles, sometimes called niche markets, and away from the general interest magazine.

Moreover, these vertical titles (focused on a narrow interest) are often for the enthusiast market. I used to make my living writing and editing for one such market: recreational scuba divers. I bet there are just as many car enthusiasts with just as much passion.

So, you've got expertise, you've got intelligence, you've got average to above-average language skills (which is all it takes to be a working pro). You've got everything you need to be a successful writer except one thing: craftsmanship.

This simply means the nuts and bolts. How to take an engine apart and put it back together. Except in this case the engine is the article and your marketing of it.

My advice: Again, don't waste your time going back to school. Most professors (I was one for 15 years) have never made a living doing anything other than talking to 18-year-olds. Professors are usually pretty clueless about the real world. Instead:

Consult the pros. We offer apprenticeship courses at *www.peakwriting.com*, where we work with you until you get published. There are plenty of courses available on the Internet by solid pros like

Moira Allen (*www.writing-world.com*) and Dana Cassell (*www.writers-editors.com*).

Whichever you choose, make sure the course is taught by a working professional. Make sure that the goal of the course is to create a marketable manuscript and to help you get it in print.

Final word of advice: By all means, turn your enthusiasm into a living. But be prepared to have a different attitude toward your hobby once it becomes your livelihood. I won't say anymore about that. You'll see what I mean.

HOW DO I PREPARE FOR A WRITING JOB INTERVIEW?

> *"I am in the UK and have an interview in a few days at a newspaper as a marketing and promotions writer. Can you give me some information on the job and how to get on at the interview. Any help would be most appreciated."*

The specific duties of that position—or just about any other corporate writing job—can vary widely from company to company. I highly recommend that you contact the newspaper before your interview and ask for a detailed job description. What sort of projects will you be working on? The newspaper should either have a printed job description or be able to give you one verbally. If they can't, what does that say about their organization and their ability to define your job duties in order to measure your success or failure?

Once you've got the job description, you can brainstorm and research by looking at similar work being done at competing publications, then be prepared to offer some exciting ideas/enhancements or at least be able to speak to your expertise in each area of responsibility the new job entails.

Good luck. Be yourself. Don't put on a show. Know the dress

code for that office. Don't underdress; try not to overdress. When interviewing potential employees, the key things I look for are:

- Someone who listens and tries to understand before speaking.

- Someone with good social skills (we'll be working with him/her up to 60 hours a week) because respect and courtesy are so important to maintaining a positive work environment.

- Someone with a well-rounded education and good overall intelligence. The technical stuff can be taught. Also, job descriptions change over time, so it's important to have a flexible employee with a sound intellectual background who is open to change.

- Someone with ambitions and plans to make them come true. My favorite interview question: "Describe yourself and what you'll be doing 10 years from now."

- I notice you have some typing/spelling errors. They're a red flag. Be sure that whatever self-prepared documents you take into the interview are 100 percent error free. Hire a proofreader if you have to. Consult web sites like *www.writers-editors.com*. You can send in your work, have it proofed and returned within a very short time frame. In a situation such as a job application, using a pro can be a wise investment.


“The best cure for writer’s block
is writer’s cramp.”

CHAPTER FIVE

HOW TO MAKE EDITORS BEG FOR IT

- **Why Are Editors So Rude?**
- **How to Find the Right Editor Every Time**
- **Foot in Door: Landing Your First Assignment**
- **How Do Editors Acquire Stories?**
- **What's the Most Common Freelancer Mistake?**
- **Setting Project Fees and Word Rates**
- **How to Get Everything You Want in a Contract**
- **What to Do When You Don't Get Paid**

Every editor hopes for good stuff to come in over the transom or pitched in a query. However, they are doomed to disappointment most of the time. I honestly believe there is a dearth of good freelancers, not a surplus. Why? It isn't their writing skills or laziness or ego-problems. It's being stuck on the outside of the magazine's office doors.

Once you're on the inside, you suddenly see the editorial formula that is at work—that must be at work—from issue to issue. Once inside, you suddenly and miraculously know what that group of ed-

itors wants and how to give it to them. Once inside, you suddenly have steady work. So, how do you get inside as a freelancer? You press the right buttons and avoid the others. You set a goal and worm, uh, work your way to it.

Heartfelt advice: Find a subject area where you do good work. Now, target a magazine in that field where you want to become a contributing editor: a freelancer who is so valuable, he or she gets an honorary title—and regular paychecks.

WHY ARE EDITORS SO RUDE? A FORMER BAD BOY REPENTS

Dealing with most editors is only slightly less painful than watching a Mariah Carey movie. Just close your eyes and wait for it to be over. For 15 years I was a kind, patient, gentle writing coach of college students. When I became an editor, I swore that I would never become one of the surly, impatient, arrogant A-holes that my freelance students and I had to deal with at times. I am proud to say that, as an editor, I was never arrogant.

Despite my promises and knowing better, as a managing editor I could be short with freelancers. As executive editor, I was downright rude. Excuses don't cut it: Everybody's busy, everybody's got deadlines, everybody's got pressure. I was bad, and *I'm sorry*. In my defense, the roots of rudeness came from specific behaviors that freelancers can and should avoid:

- **Asking for help**
  Once an assignment is made, dialogue between editor and writer is important. But before the editor-writer relationship is established, asking for help is out of place. Editors are business people, not writing coaches. Editors want freelancers who don't need help, who can supply ideas the editor wants by reading the magazine or writer's guidelines. Besides, put yourself in an editor's chair for a moment: An unknown free-

lancer asks for your help, then asks you for a paying assignment. What's wrong with that picture?

- **Wanting to be published**
  Nothing wrong with that *per se*. But when the eagerness to see one's name in print is the primary motivation, an editor can usually sniff it out with a highly evolved WEWS: "Wannabe Early Warning System." It's clear from the way these writers present themselves and their ideas that their primary goal is to use the magazine for ego gratification. As an editor, my livelihood depended on the business of the magazine. It offended me personally that someone wanted to use that business for something as crass as the bragging rights of a byline. Be serious. Be a pro. Most of all, be businesslike.

- **Not distinguishing between the target magazine and its competition**
  Editors tend to take it personally when a freelancer proposes a story for a department that only his competitor publishes. This *faux pas* is more than just a matter of misdirected mail. It's clear the writer hasn't bothered to look closely at the magazine—freelancing's original sin. The staff and I took pride in our work. The magazine was our creative lives. We poured ourselves into it, lived it, breathed it, worried over it, rode the waves of success and failure with it. Not bothering to read what we labored over was a form of disrespect we found pretty off-putting. Pitching us a competitor's department was like rubbing road salt in the wound.

How to Please an Editor

While the world of publishing will always have its share of arrogant grouches, with these tips at least you'll have a shot at making one smile, reach for the phone and start punching in your area code.

Target

Read and dissect the editor's magazine. Use the name of a specific column or feature type when pitching your idea. Make sure (by reading back issues) that the magazine hasn't written about your topic recently. Give your material a unique slant that the editor hasn't seen before. Before going on vacation, wannabes would call me up and say, "I'm heading to Belize next week. Need anything?" Talk about lack of a slant. I was often tempted to say, "Yeah, pick me up a quart of milk and a loaf of iguana."

Keep It Short

Seriously, an effective query can be done in few paragraphs. Keep it short. Get to the point. Real example:

"Hi, David:

In your 'Behind the Lines' column you've talked recently about diver impact on fragile coral reefs. At the dive operation I run on St. Lucia, we see exactly what you're talking about every day. And you're right—lack of buoyancy control is the usual culprit.

Our daily experience has allowed us to identify the diver most likely to be a reef wrecker: 'The Quarry Gorilla.' This is the macho diver who straps on 30 pounds of lead, wears a thick wetsuit or dry suit with hood, and mistakenly believes that his cold-water, quarry-diving skills from back home are appropriate for the bathtub called the Caribbean. Our reefs know the truth.

I want to write a 500-word self-test for your 'Dive Like a Pro' department that will alert your readers to the habits and attitudes of

the 'Quarry Gorilla' so when they come down to dive with us, they leave the monkey business at home.

Thanks for your consideration."

He'd read the magazine and targeted a department, had thought out a unique slant on a frequently discussed issue (buoyancy control), established his credentials and even demonstrated magazine savvy by proposing the quiz format. All in 150 words. I paid him $500 for the story.

Get a Clue; They're Free

Find out how an editor likes to do business. Some prefer the phone, some email, some fax, some the entire manuscript. By the same token, some hate the phone, hate email, hate faxes, hate getting an entire manuscript. Why not find out first by asking? Doing so shows respect, an understanding of an editor's job and will put you ahead of the pack.

Be the Smartest

Convince the editor you're an expert on the topic you're proposing. Here's why: Trust is a significant issue when doing business with an editor. It's one of the reasons proper manuscript format and other matters of etiquette are so important: They are ways for you to signal that you're a pro who can be trusted. That trust is the basis of your relationship. An editor has to trust you to deliver the goods on time, to be honest, to get the facts right, to represent the magazine well when interviewing and conducting other on-assignment duties. If you go over budget, miss a deadline, get the facts wrong, or piss off an advertiser, who do you think is gonna get reamed? So, not only do you need to observe all the rules of etiquette, you also have to inspire trust by doing solid research on the topic so that you come across as authoritative. The first contact is the first opportunity to build or destroy trust.

Secret bonus tip: Most editors define "authoritative" as anyone they think knows more than they do.

Think Cover Lines

Another secret: When it comes to stories, editors often think in headlines. How will they pitch the story on the cover? A story with a great sell line can boost newsstand sales and subscription renewals; a great sell line also indicates the story is on target with that readership. So, study a magazine's cover lines and entitle your article accordingly.

Some Quick Don'ts

- Don't tell an editor how much you love the magazine. An editor wants a business relationship, not a fan club.
- Don't threaten: "If I don't hear from you in two weeks, I'll feel free to send my story to *Men's Fitness*." Gosh, don't want to hold you up. Please, go right ahead.
- Don't ask an editor to suggest another outlet, if rejected. Get your own agent and market book.
- Don't offer to rewrite, "if needed." Gee, talk about confidence! Also, pros know that rewriting is part of agreeing to any assignment.

Tips for Dealing with Editors on the Phone

Script It

Nothing labels you as a newbie faster than the inability to state your business and your needs in a succinct, professional way on the phone. You can't pre-script an entire conversation, but you can have a list of salient points and facts at hand.

Keep Voice Mails Brief

Scripting is especially important if you have to leave a voice mail. The most common sins are talking in circles (repetition), rhetorical fillers ("uh," "duh," "umm," etc.), and garbling the important stuff like the return phone number.

Forget the Schmooze

Don't confuse a business call with a social one. This is not the time for chit-chat. One ritualistic pleasantry is enough. Don't be brusque or antagonistic (you'd be surprised how many people use those to mask their nervousness and insecurity). Get down to business in a pleasant but direct way.

Put It Up Front

Just as you should in journalism's inverted pyramid, put key info up front. For voice mails, this means beginning with a clear statement of your name and phone number before the rest of the message. This prevents an editor from having to replay an entire message in case they miss or need to recheck a phone number or name.

Know When It's Over

Another common mistake is lingering and jabbering once business is taken care of. Once your questions have been answered and your request made, be the one to say, "Thanks for your time. Look forward to working with you. Bye." Then hang up!

Bonus Tip

When you're confident enough, take a second at the end of a long conversation to recap the major points. Doing so helps you both avoid miscommunications and unneeded call backs for clarification.

HOW TO FIND THE RIGHT EDITOR EVERY TIME

Time for the payoff: printing out a final copy of your story, sticking it in an envelope, and sealing it with a kiss. But wait—did you address it to the right editor? Getting your manuscript in receptive hands lies at the heart of the freelance game. Sending your article on the latest sex moves to ensure orgasm to a magazine's nutrition editor won't help your credibility. The best you can hope for is that the nutritionist will feel sorry for the hapless freelancer and pass the story on to the right desk. Don't count on it. It's just that kind of mistake that lights up any editor's WEWS. Take some time to investigate the staff and their jobs before submitting to that publication, publishing house or production company.

How to Read a Masthead

Newspapers, magazines and many newsletters have mastheads—a nautical term that found its way into journalism and refers to a section of the publication (usually up front) that lists the publication's employees, job titles, place of business, circulation and other business details. For larger publications, mastheads may be divided into the editorial masthead and the publishing masthead, which lists the business and marketing folks.

Hierarchy is one of the few things these mastheads have in common: the higher your level of responsibility, the higher up your name appears on the masthead. This bit of information is critical because job titles vary significantly from company to company. For instance, sometimes the top editorial person is the executive editor, sometimes editor-in-chief, sometimes just plain editor. Regardless of job title, the hierarchy will accurately display the pecking order.

Unless you have a prior working relationship with the top person, you will probably send your story to sub-editors down to the assistant-editor level. Below that level are editorial assistants, copy editors, production editors and manuscript editors who lack the

WHO SHOULD YOU SUBMIT TO?		
Title	**Probable Duties**	**Submit to?**
Acquisitions Editor	Seeks, develops, evaluates and likely buys manuscripts from freelancers	Yes
Assistant Editor	Duties range from gopher to copy editor, to department editor	Maybe
Associate Editor	Usually has significant editing responsibilities	Yes
Consulting Editor	Usually a freelancer hired for a specific project	No
Contributing Editor	A trusty freelancer who has been rewarded with this honorary title	No
Copy Editor	Responsible for proofing and editing stories in the prepublication stage	No
Department Editor	An assistant, associate or senior editor with overall responsibility for acquiring and developing stories for a specific section	Yes
Editor-at-large	Sometimes on the editorial staff to perform a variety of duties, but most often a freelancer	No
Editor-in-chief	Top editorial position	Maybe, if you're acquainted or it's a small pub
Editorial Assistant/ Editorial Associate	Usually will not have responsibility for interacting with freelancers	No
Executive Editor	Top editorial position when listed first on the masthead; otherwise functions as a sub-editor	Yes
Managing Editor	Responsible for the day-to-day editorial production process and copy flow; doesn't necessarily interact with freelancers.	Maybe
Production Editor	Focuses on the physical product as a liaison to ad folks, prepress house and printer	No
Senior Editor	A higher-level position, below managing and executive, usually with responsibility for working with freelancers	Yes
Supervising Editor	Often the same as managing editor	Maybe

power (or interest) to read your submission and make a recommendation on it. The larger the publication (usually indicated by the number of names on the masthead as well as the circulation figure given), the lower down you should stay. And vice versa for smaller publications.

A last clue is any specific information given in the editor's job title: training editor, book review editor, nutrition editor, features editor, departments editor. Look for information that will help you target the most appropriate person for your submission.

If you aren't comfortable with your ability to narrow the field from a masthead, call the magazine's general number. At large companies, you'll likely have to ask to speak to someone in the editorial department. When you reach someone in edit, describe the type of submission you wish to make ("a 500-word sidebar on new butt-firming scams") and ask who would be the most appropriate editor to send it to. Confirm spelling of the editor's name while on the phone in case it isn't on the masthead.

Resource Warning

Use print resources like the *Literary Market Place* and *Writer's Market* carefully. Even books that are updated yearly can lag behind personnel changes in the fluid job world of publishing. The most reliable books of listings are, by far, the various resource books by the Writer's Digest people, including market books for fiction, poetry, art, children's works, photography and more. However, since it's a book, the lag time between information collection and its publication can be a half year or more—plenty of time for some staffing musical chairs. Try to confirm names and positions via a web site or, better yet, a phone call.

FOOT IN DOOR: LANDING YOUR FIRST ASSIGNMENT

You've got the goods, now you've got to get an editor's attention

and keep it until you land that coveted first assignment. Don't underestimate the difficulty of this task: Getting a first assignment from an editor is the hardest one. But do a gangbuster job on it, and you may not have to ask for more. Here are some tips.

Find a News Peg

A news peg is any current news item that gives immediacy and relevance to your story. Seasonal pegs are good for many consumer magazines: the subject of child safety in public places takes on an edge at Halloween. Local recycling efforts will generate more interest around Earth Day. The seasons for forest fires and floods get many people thinking about home insurance. But remember, seasonal material for magazines must be submitted six months or more in advance.

Polish Tomatoes

At Rodale Press, this was our expression for the need to freshen up perennial topics. "Tomatoes" referred to the company's oldest magazine, *Organic Gardening*, and the excruciating burden on its editors to make tomatoes fresh and exciting at least six times a year. Amby Burfoot, executive editor at *Runner's World*, has the same problem with "Running Your Best 10K." And the editors at *Men's Health* spend, literally, days brainstorming new versions of "Flat Belly—Now!" One of the greatest favors you can do for an editor is to read back issues and find those perennial topics. Then come up with fresh takes on the hoary old things that must be covered, whether the editors want to or not.

Create Cover Buzz

When measured per word, editors spend more time writing cover sell lines than anything else in the magazine. If you study the kind of cover lines that work in that genre, then come up with powerful

headlines for your stories, you'll be getting paid in a matter of no time. I promise.

Keep It Pithy

Today, magazine editing is all about cramming maximum information into minimum space in order to save costs and provide more room for ads. So, in every contact with an editor, keep it short and pithy. Show compression. It's what today's editors are looking for. And while you're at it, avoid breathless, frothy prose. Such verbal inflation signals possible exaggeration when it comes to reporting. Keep it crisp and plain.

Cloak Praise

I advise against gushing over how much you love the editor's magazine, which is almost always seen as a transparent attempt at ingratiation. But there is a way to work it in invisibly: Speak specifically as a writer—"I thought the Honduras story in the last issue contained some solid reporting—very balanced." Now you're speaking as one pro to another.

HOW DO EDITORS ACQUIRE STORIES?

> *"Do editors mainly assign stories to staff writers instead of freelancers? I've been getting an awful lot of rejections and I've got the feeling the magazine just doesn't want freelance stuff."*

You could be right. Check the publication's writer's guidelines (you may need to ask for a copy if you haven't already), check their market listing in one of the latest market books, or give a call and ask directly: "Do you accept freelance queries and submissions? If so, in what departments?"

To answer your larger question: Most story ideas are generated

by the editorial staff and a cadre of outside freelancers writers called "contributing editors," who write regularly for the magazine. In a sense, you have to be an insider to know what story ideas work for this group, what stories have been done or are going to be done.

Now, the good news: There's a way to get inside. You purchase six or more of the most recent issues of your target magazine *and its competition*. Study them, because you darn well better believe that editors read every issue of a competitor's magazine. Now propose something new or an irresistible twist on a perennial topic. Mention your research in your query.

If you're just starting out, consider hiring a good writing coach. He or she will help you focus on a single market, analyze it, and write something that fits. Your goal is to signal to the editorial team that you are one of them. Two desirable things can then happen: They'll listen to your story idea attentively or they might even give you one of theirs to work on.

DO FREELANCERS REALLY HAVE A CHANCE AT THE BIG MAGAZINES?

> *"What percent of a newsstand magazine's stories are written by freelancers, what percent by staff writers? Do we freelancers really have a shot?"*

Generally speaking, a newsstand magazine's contributions are predominantly by regulars, either staffers or regular freelance contractors. It's simply good business: With limited resources and deadlines, an editor can't afford to take too many chances on the ability of unknown writers to produce the goods on deadline and on budget. That doesn't mean you can't break in. You can. Editors are always in need of fresh ideas and writing. When you submit something that rings those two bells, you will get noticed. I guarantee it. But submitting a fresh idea that an editor can use in a specific sec-

tion of the magazine requires study and intuition that are only gained through hard work.

The specific answer to your question can often be found in the latest edition of *Bacon's Directory of Magazines* (available at your library) or *Writer's Market* (Writer's Digest Books), where you'll find descriptions of thousands of magazines. Bacon's is for public relations professionals and contains almost double the number of titles as *Writer's Market*; however, *WM* is geared directly to writers and is more useful in some ways. Another source not to be overlooked is Standard Rate and Data Service's *Consumer Magazine Advertising Source* and *Business Publication Advertising Source* (trade publications) also available at many libraries. SRDS's publications are geared toward media planners, but contain a wealth of information useful to writers.

Many of the descriptions in *Writer's Market* clarify what departments and features are most open to freelancers and how much of the total magazine is contributed by freelancers. A magazine's own writer's guidelines often give this information, too. More quick tips for hitting the big time:

Create Buzz-Worthy Stories

Controversy sells, and editors know it. If you can handle a controversial subject delicately and effectively, it may be the kind of story that an editor is looking for to gain an edge over the competition. Also consider the media: It's a significant coup for an editor if a story from his/her magazine gets picked up by the broadcast media. What has been grabbing the media's attention lately in your subject area? Finding a story that piques the media's interest can create buzz for the magazine and paychecks for you.

Give Yourself a Reporting Edge

Again, don't forget that editors within a certain category of maga-

zines are competing with each other for readers. What can you offer your target magazine's readers that its competing magazines don't: A unique approach to quizzes? A story with emotional resonance in a field that usually doesn't see that kind of treatment? How can you outdo the writers at the competing magazines? Writers in the men's service magazines go through this each issue with their ultimate guides: how to survive anything, how to get anything you want from a woman, how to fix anything. Set the bar high, vault over it and past your competition.

Write in a Distinctive Voice

Definitely one of those things easier said than done. But think about your favorite writers: more than likely you can hear each distinctive voice playing in your mind's speakers. A unique, confident voice is truly one of the defining characteristics of the best-paid writers: Bruce McCall's jazz riffs masquerading as car reviews; Tim Cahill's self-deprecating travelogues; Jon Krakauer's spiritual honesty. A distinctive voice is a commodity that can open the big doors. How do you acquire such a voice? By turning off the self-monitor in your head, letting the tiny voice living in there speak, then writing down everything it says. It may not always be grammatical, but it will be honest. The first you can fix, the second you can't buy.

WHAT'S THE MOST COMMON FREELANCER MISTAKE WHEN CONTACTING AN EDITOR?

> *"I want to write for a certain magazine. It's my dream magazine. I know I'm right for it and so I want to avoid blowing it on the first contact. What mistakes should I definitely avoid when contacting the big cheese?"*

The most common mistake is, hands down, laziness. Here's what I mean: Most often the writer has not thoroughly studied the maga-

zine and taken the time to hone a story idea that fits it exactly. Most editors find it pretty insulting to be contacted about a story that clearly shows the writer has never actually read past the magazine's cover or didn't do so attentively. This point cannot be emphasized enough: To break into a magazine, you must write something that fits. It must fit the magazine's philosophy and slant on its subject matter, its voice, its department and feature formats, its everything. Show the big cheese that you're not a mouse. You know the magazine as well as he does, and you're ready to roar.

DOES SELF-PUBLISHING COME AFTER REJECTION AND FRUSTRATION?

> *"Thanks for getting back to me. Since the time I posed my question regarding publishing I have had an essay published in the National Woman Writers Association's monthly publication, and I was just told by a metaphysical publication in North Carolina that they are interested in publishing one of my articles in their January issue. So things are looking up. Thanks for your invaluable help.*
>
> *"Now I have a book manuscript that is ready for publication and I'm looking around for a possible publisher. The manuscript is metaphysically based and consists of short stories, letters and essays that I have written regarding my own personal spiritual journey. I have contacted a number of publishers. As you warned me, if you are not already an established author, they are not interested and the rejections are mounting. My question is how do you get that establishment if nobody is willing to give you a chance??? What am I supposed to do—publish it myself? Just a little venting on my part."*

Wow, you've been busy. Congrats on your byline in the women's

writers group! I think you are smart to focus your writing on this one area and explore various publishing possibilities in it. You're on your way to positioning yourself as an expert in this genre, and that's really the key to success in nonfiction. Good going. Sorry about the publisher rejections. Part of the process. Welcome to the club. To answer your specific questions about your book manuscript:

First, Make Sure Your Mail Is Addressed Correctly

Remember that 90 percent of all freelancer mail in America is sent to the wrong address. Editors, publishers and agents receive many good ideas and stories, but often the material just isn't what that publishing house or agent specializes in. Before submitting, use the Internet, a market book or the phone to make sure your book topic fits what they do.

Here's an important lesson: There's rarely anything generic in magazine or book publishing. You have to write a specific work, at a specific length and slant, for a specific magazine or book market. For example, if you wanted to publish a feature on "Spirituality in Modern Marriage" in *Cosmo* and *Oprah*, each article would have to be substantially different to fit the magazine where it is being sent—even though both those magazines are in the same genre. Imagine the difference between how *Cosmo* and *Oprah* would treat the same topic of spirituality in love relationships! In one it would be a quiz or dirty story, and in the other it would be a life-altering experience guaranteed to make you weep. Same topic, different reader expectations, therefore different treatments.

Second, What Should You Do with Your Book Manuscript?

1. Write a kick-butt nonfiction book proposal, and send it to an appropriate agent or publisher whom you have researched and ensured that they represent your category. Most nonfiction today is published by small presses (less than 10 titles),

university presses and independent publishers. I urge you to focus your search in those categories. Example: Health Communications, Inc., a small publisher in South Florida, has always specialized in books for the self-recovery movement—*Adult Children of Alcoholics* was an important success for HCI. Two beginning writers felt they had a book that fit HCI's specialty and pitched it to them. The name of the book was *Chicken Soup for the Soul*. The right book, the right publisher, the right market.

2. Divide your manuscript into magazine articles and try to sell them.

3. Self-publish your book and learn to market it yourself. If you attempt the last option, you had better be ready for what it entails: becoming an independent businessperson called a publisher. The work is hard and your ambition must burn intensely. Nonetheless, given the economics facing today's big publishers and the proliferation of information about self-publishing, it's an option many nonfiction writers are looking at closely. Consider the comparison on page 147 by one of the leaders of the self-publishing movement, Dan Poynter (reprinted with permission from Poynter's web site, *www.parapublishing.com*).

Given those comparisons, it's no surprise that, according to Poynter, a "New Model" of book publishing is emerging. Currently, New York-based publishers account for less than 10 percent of published nonfiction. Will you reduce that by another fraction? I'll share with you my favorite quote from Dan Poynter's *The Self-Publishing Manual*:

Have you ever heard anyone say, "Simon & Schuster, I

IS SELF-PUBLISHING FOR YOU?	
Traditional Royalty Publishing	**Self-Publishing**
Must draft proposal	No wasted time
Must find agent	No wasted time
18 months to get off press	5 weeks to print the book
Advance	No advance
$3,000+ for promotion	$1,000-$3,000 for printing and promotion
No royalties for 2-3 years	Money flows in 30 days
Little promotion by publisher	You control promotion
Lose control of book	Keep control of your book
Make less money	Make more money
In stores for 4 months only	Book sells forever
No revisions allowed	Always up-to-date
Fewer tax deductions	More tax deductions
Possible rejection	No rejection
You focus on writing	You focus on writing and running a business

love their books, I buy everything they publish?" Of course not. People want to know what the book is about. Is this something I need to know? Who is the author? Is she a credible person? No one ever asks, "Who is the publisher?

For a fuller discussion of this issue and a list of self-publisher resources, see Chapter Eight's "Catch the Wave: Is Self-Publishing the New Model for the Book Industry?"

WHAT'S A SLUSH PILE? HOW DO I GET OUT?

"I have written my first feature article for a national

magazine and got a call from the editor who said the article was in the consideration pile. That's not the same as the infamous slush pile is it? What do the odds look like for this, and is there any way to increase the odds of them buying it?"

Congratulations on a significant achievement: a feature submission to a national magazine and a call from an editor! Because of the call, I don't think you're in a slush pile. A slush pile is usually a messy heap of unsolicited manuscripts lying on a junior editor's floor. If the mess gets confused with the trash and thrown away, no one will mind—except the authors. Nobody asked to see them in the first place.

Odds of getting out of a slush pile? Not good. But that's probably not your problem: the editor said "consideration pile." Can you improve the odds of having your manuscript accepted? Yes, you can: By not being a pest to the editor. Give her several weeks, then pen a short note asking about the story's status. If there's still no response, forget about it and send the manuscript elsewhere. Since the editor initiated the call to you, you should be hopeful. It's probably the pile on her desk, not the floor. You should take any personal contact from an editor as a positive sign.

WILL AN EDITOR STEAL MY IDEAS?

"Have you ever had the feeling when talking with an editor that she or he may have called to fish for information? This happened to me recently. She asked an awful lot of questions, yet never said anything about giving me the assignment. Said she'd get back to me. Am I paranoid?"

Paranoid that the editor may steal your idea? Rest easy. Only rarely

does anything like that happen. It's hard to imagine that anyone with such an obvious lack of ethics could make it to the middle- or upper-levels of publishing. I'd say that the editor was doing her job by probing your idea for a possible fit in her lineup. She was probably trying to get to the meat of the story and find an angle on it that would work for her readership. That's my guess, and it is certainly what I'd do, especially if the query letter was tempting but lacked sufficient detail. If you want to email it to me, I'll critique it, too. Writing a good query is an art by itself: not too much or too little, not too aggressive or shy, not too gimmicky or plain. The best way to get a handle on what would be a good query letter for a specific pub is to devour that pub: its style, subject range, slants, voice, attitude toward readers, etc. That'll put you in the editor's mind, and that's where the deal is closed.

SETTING PROJECT FEES AND WORD RATES

What are you worth as a writer? Hopefully, it's something between "a penny for your thoughts" and "the moon." Determining how much you should charge is one of the most important exercises you will ever perform as a freelance writer. It causes you to think deeply about your personal financial plan and commit to an annual salary target. Like it or not, as a freelancer you're no longer just a writer. You're also a businessperson. Businesses succeed or fail based upon how well they are managed. The very essence of good management includes a realistic analysis and a conscious setting of clear, attainable financial goals—the proverbial bottom line.

A financial spreadsheet has a top line (revenue), a middle line (expenses), and a bottom line (net income). The number on the bottom line is either black (a positive financial result) or is in parentheses and sometimes red (a negative result). Just because you are no longer a wage-slave and corporate 'ho, don't think you can es-

cape the tyranny of the bottom line. Matter of fact, you're now the one responsible for it. You're the boss. How does it feel so far?

"How much should I charge?" is really another way of asking, "What are my financial goals as an independent businessperson who is responsible for the profit of this company?" That's a serious question which deserves your careful thought and analysis.

Writing for Periodicals

Normally, if you're writing for a magazine or newspaper, you'll find fixed pay rates that vary somewhat according to what you're writing, your status (first-time contributor, regular, etc.) and your reputation in that field (credentialed authority, national-level clips in prestigious pubs, etc.). You can usually find out what these pay ranges are from market books, the publication's own writer guidelines, and by asking. The National Writer's Union also maintains a members-only database of pay rates of many periodicals. And don't forget your ability to negotiate those rates.

Contract Writer

Depending on the field you're writing in, you may be asked to set an hourly rate or quote a project fee. This is true in a number of fields open to freelancers: advertising and PR copywriting, TV scripts, business and technical writing, and a number of jobs related to book publishing (proofing, indexing, ghost writing, etc.). When determining what to charge as a contract writer, consider these four factors:

- Overhead
- Experience/clips
- Client attributes
- Project requirements

Overhead refers to all expenses related to running your freelance business and includes: rent and utilities (if any); connection charges (phone, fax, Internet); office supplies; equipment purchases and maintenance; travel; postage and shipping materials; subscriptions to professional associations, publications and books. The total of these expenses comprises your fixed overhead. To break even, you must earn at least this amount.

Calculating Hourly Rates and Net Income

The overhead figure provides a starting point for determining your hourly rate. If you are writing for a periodical and receiving a per-word rate or set article fee, you should also perform these calculations to determine the pay you require in order to accept or reject an offered assignment.

The next factor is your net annual income, which is your gross income minus expenses and 35 percent for taxes and benefits: health, life, dental and disability insurance, retirement fund contribution, etc.

Example:
If you have fixed expenses of $8,000 per year, and you want to net $50,000 a year via freelance work, you must gross $78,300:

$78,300
– $8,000 (overhead)
– $20,300 (35% taxes/benefits)
= $50,000

Now comes the calculation of how much you should charge per hour to achieve that goal of $50,000 net. Consider basing your calculation on a typical, Monday to Friday, 40-hour work week, giving yourself 12 weeks of non-writing to account for holidays, sick days,

bank and bookkeeping days, marketing and other non-writing days, family emergencies, etc.:

40 hours per week x 40 writing weeks = 1,600 billable hours
$78,300 ÷ 1,600 hours = $50/hour (rounded up)

Keep in mind the overall economics of freelancing: $50,000 per year is definitely a lofty goal, since the National Writer's Union reports that only 15 percent of freelancers make more than $30,000 per year. And now for the good news: The NWU also reports that pay rates are either stagnant or declining!

Other Hourly Formulas

In her article "An Inside Look at Consulting," Anne Wallingford provides a valuable way to see yourself from an employer's perspective. This example is created by comparing a freelancer's rate to that of a corporate employee earning $50,000 annually.

1. **Determine daily labor rate**
   Step 1: Multiply your desired annual net compensation by 1.5 to account for life, health, dental, disability and retirement benefits. This reflects the real cost to a company of an employee.

   Example: $50,000 x 1.5 = $75,000 annual labor rate

   Step 2: Divide the annual labor rate by 180. This is the standard number of billable days in a year once 365 is subtracted by a total of 185 non-work days (104 weekend days, 8 holidays, 10 vacation days, 5 sick days, 24 days for administrative tasks, 34 days to market yourself and your business).

Daily Labor rate:
$75,000 ÷ 180 = $417 daily labor rate

2. **Determine Expenses**
   Statistics show that overhead for a self-employed consultant averages 44 percent of labor.

   Example: $417 x 44% = $183 daily overhead expenses

3. **Factor in Profit Margin**
   As a business, you are taking risks and providing service and/or products the same as any other business. Each consultant must determine a reasonable profit margin; this can range from 15% to 40%, with 20% being considered fair in most markets.

   Example: $417 x 20% = $84 daily profit

4. **Determine daily billing rate**
   Add daily labor rate + daily overhead expenses + daily profit

   Example:

   $417 daily labor rate
   \+ $165 daily overhead expenses
   \+ $84 daily profit
   $684

   Divide by 8, the typical number of hours in a business work day
   $684 ÷ 8 = $85 hour

Best Source for Fee Info

The yearly edition of *Writer's Market* includes a report on current hourly rates and flat-fee rates for a variety of industries and publishing formats. It is the best source of information I've found on current practices in the freelance industry. *2002 Writer's Market* also includes its own simple formula for figuring an hourly rate that results in the same $50 per hour rate as mine:

Required annual income + 30% expenses + 30% benefits ÷ annual billable hours = hourly rate

Thus:
$50,000 + $15,000 + $15,000 ÷ 1,600 hours = $50/hour

Experience & Talent

The more of each that you have (and can prove you have), the more you can charge. One of the best ways of getting a handle on where you fit is to talk to other freelancers, locally, nationally, and internationally. The online forum at www.freelanceonline.com provides one of the most active congregations of fellow scribes. You can also check your local yellow pages for writing consultants, writing groups, PR and advertising consultants and firms.

The Client

Several factors come into play:

- Client location
  In general, clients on the two coasts (especially in the big cities) expect to pay more than clients in Rocky Top, Tennessee.

- Client size
  Larger and more affluent clients usually pay more, and if you

try to charge noticeably less than what they normally pay, you will raise their suspicions.

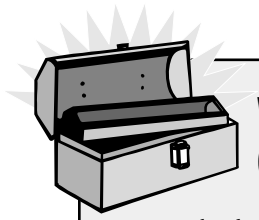
- Client regularity
  A client who gives you steady work deserves a lower rate than a one-timer.

- Client special needs
  The most common is a client who needs a job done on a "rush" basis—one that will require you to work "overtime" or otherwise alter your normal schedule to accommodate the request. The Code of Fair Practice from the Editorial Freelance Association recommends a 20 to 50 percent surcharge be added to your normal hourly rate.

- Client dependability
  This raises the question of "kill fees" and "cancellation fees." These come into play when a client engages your services, you begin work, but the job is cancelled prior to delivery. To account for this scenario, it is recommended that your contract include a kill fee for articles or a cancellation fee (usually the number of hours worked to that point times hourly rate) for contract work.

Project Requirements

Finally, before agreeing to any contract work, it is essential that you perform a thorough analysis of the amount of time you estimate the project will require. Writing a tri-fold sales brochure for a company that has compiled all the materials for you on its products and even has solicited customer testimonials is a much different project than one for which you must do the legwork and research to generate those materials. Besides obvious factors like word length and



WRITER'S TOOLBOX
ONLINE RESOURCES FOR PAY RATES

- Periodical Writers Association of Canada: *www.writers.ca/whattopay.htm*
  Here you'll find a set of "Professional Fee Guidelines."
- Editorial Freelancers Association: *www.the-efa.org/Code2.html*
  Guidelines on setting fees and rates.
- National Writer's Union: *www.nwu.org/hotline/hotsurv.htm*
  The results of a survey carried out in 1999 by the National Writer's Union on freelance and contract writer rates.
- Donald Denier: *www.writing-world.com/business/worth.html*
  Some valuable thoughts about personal "worth" and helpful links about this topic.

research, there is also travel required—if you're traveling for a client, you are most likely not working for another. Travel time is usually billable. Ask any lawyer.

NEGOTIATE THIS! GETTING EVERYTHING YOU WANT IN A FREELANCE CONTRACT

Who writes the contracts that publishers send to you? Uh huh. And whose interests are those corporate lawyers looking out for? Hint: Not yours. Keep those two points in mind whenever you sit down to read a publisher's contract. You have every right to discuss the terms of it. Whether you want to negotiate or not is your option and should be exercised wisely, but you certainly have the right to negotiate.

As an editor who had to acquire freelancer signatures on con-

tracts (and who supervised other editors doing the same), it didn't bother us that a writer questioned certain clauses and wanted further information. Matter of fact, we had more respect for those who did and especially for those who knew how to ask for certain changes in the boilerplate contract. Knowing how to ask and what to ask spell the difference between an amateur and a pro when it comes to contract negotiations.

Another secret: An editor will almost never offer you what he or she can actually afford to pay you. It's called low-balling and editors play such games as well as rug salesmen. After all, this is business: The editor's/publisher's goal is to get the best writing and most rights at the lowest cost possible. Your goal is to sell the fewest rights at the highest cost. Meeting somewhere in the middle is called negotiation. Some tips on doing it:

Tip #1: You Got to Believe

You've got to believe that you are worth what you'll be asking. That belief should be based on an up-to-date knowledge of the marketplace and what other freelancers of your experience and reputation are receiving for similar work. Do your research. Find out what the going rates are. Establish your own rates. Ask for them, without shame or timidity.

Tip #2: You Got to Talk the Talk

Editors and publishers deal with contracts everyday. Their companies probably provide seminars on contracts and negotiations. What about you? You've got to understand the terms and clauses in a contract at least as well as the person you're dealing with. This means getting the information you need. The National Writer's Union publishes an excellent book on the subject: the *NWU Guide to Book Contracts*. Much of the information is also applicable to journalism contracts. See the resources listed in the article "How

Much Should You Charge?" earlier in this chapter. The writer associations listed there provide most of the information that you need.

Tip #3: You Got to Know When to Hold 'Em, When to Fold 'Em

One of your most important tasks is to determine the lowest fee you will accept, the point beyond which you will not go. That point is going to change during your career. When you first start out, you'll be willing to take less and give more in order to get the byline. That's understandable and acceptable. Along the way, your goal is to continually assess what that bottom line is. Above that line is your comfort zone where everything is negotiable in a collegial way. Once you hit the bottom line, you're looking at a decision either to walk or to work for less than is normally acceptable to you.

Tip #4: You Got to Get Ready

While it's probably not essential to actually write out a script to follow before negotiating with an editor or publisher, at least jot down on the contract the points you wish to make and the order in which you wish to make them. Negotiations require as much care in word choice and tone as any situation does when delicate subjects are on the table.

Examples:

No: "That's not enough money for my work."
Yes: "At first glance, I have to tell you, that seems just a bit on the low side to me."

And what if Editor says, "Sorry, that's the best I can do."

No: "To make it worth my time, I must have..."
Yes: "I understand totally. You've got a budget to work with and I appreciate that. But what I had in mind was..."

The point is not just that you get more flies with honey than with vinegar, although you certainly do. Such verbal gymnastics signal that you are reasonable and flexible, that you are unemotional about this issue, that you understand the importance of money and the delicate nature of talking about it.

Such language also invites further conversation about the subject instead of putting the other person on the defensive. One of the first things you learn in marriage counseling, oops, I mean in basic psychology class, is that if someone perceives they are being attacked, the natural and nearly unavoidable reaction for them is to become defensive and to fight back. Use language that allows you to avoid confrontation, not instigate it.

And what if after such politeness, the editor once again refuses to budge? Now load up the detail and put it on your side:

Editor: "Sorry. That's all we're offering for this type of article."

No: "I don't understand why you expect to pay so little for so much."

Yes: "Right, and I remember reading that exact figure in your writer's guidelines. That's perfectly understandable. But remember, I had to do some special digging at the mayor's office for that data you wanted on the homeless numbers in Allentown, which added a lot to the article and was a good call on your part. And there was the quote you wanted me to get from the shelter volunteer. So, I just think, considering the extra time and research put into this, that we should agree on something like 10 percent more. What do you think? That's doable, isn't it?"

Good luck. Never let 'em see you sweat.

SHOULD I WRITE ON SPEC? SHOULD I WRITE FOR FREE?

Sooner or later during your career, you'll be asked to do both. Have your answers ready to go.

On Spec: Once and Done

Here's the pickle: You've already written one article for this editor on spec. She liked it. You got paid. Great, you think, a productive new market for me. So you submit another query. Ouch! She wants to see it, but "on spec" again. Should you or shouldn't you? No, you shouldn't.

Do not write a second article for this editor on spec. If the first article was turned in on time, at the right word count, required minimal rewriting and editing, you should not be expected to write on spec again. There is only one purpose in giving an "on spec" assignment: one for which an editor does not provide a contract or any promise to compensate you, not even a kill fee. That purpose is to test the waters with a writer for the first time, especially when that writer lacks substantial clips. Once you've proven yourself, you should be given contracts with kill fees—the promise to pay a percentage of the article's agreed upon price if the offer is withdrawn or the article doesn't make it to publication.

As someone trying to make a living, you cannot be expected to provide your services on speculation. Can you imagine a plumber or auto mechanic doing so? "I'll fix your pipes and, if you like the job I do, you can pay me." Writing for a specific magazine can often mean producing a piece that has little marketability elsewhere. If the on-spec assignment doesn't work out, you've not only wasted your time, you've actually lost money that you could have earned by writing something else or fixing someone else's pipes.

My advice: Give such an editor one more chance. Simply say, "I'd really love to do this article for you. I thought the last one worked out great. But, I'm sorry, I can't write a second assignment

on spec." Then pause. Wait. Put the onus on the editor to respond, whether you're talking on the phone or corresponding by email. If you get a contract, great. Put this behind you and chalk it up to business: Many editors (and I was one of them) will always try to negotiate the most favorable terms for them. No big deal. Part of the game. But if this is the kind of editor who can't make contractual commitments to qualified freelancers, run like hell. To the editors who can.

Why Free Rarely Is

Throughout your career you will occasionally be asked to write something for free. And there may indeed be situations when doing so makes sense.

Writing no-pay articles for web sites can help get your name in front of editors, readers and other experts in your area. An important book marketing technique is for an author to offer free content to web sites what will allow a byline that includes a promotion for the book. When breaking into a new genre, it may make sense to write for free just to establish your presence and some credentials there. Finally, you may write for free because it's a good cause. Whether it's your college alumni magazine, a newsletter for battered husbands, or your local neighborhood watch group.

In each of those situations, you could argue that there is a fair exchange (albeit non-monetary) taking place. What is definitely to be avoided is any situation which tries to take unfair advantage of your time and your talents. As a freelancer, those are what you offer the marketplace. And as my grandfather from Arkansas used to say, "Why buy the cow if the milk's for free?" Grandpa was talking about premarital sex—I think. But his wise words also apply to writers: To be considered a professional, you have to conduct business as one, and that means putting a clear and reasonable value on your products and services; otherwise, I hear Wal-Mart is hiring greeters.

Bottom line: Unless you are receiving an important non-monetary value, a fee, not free, puts dinner on the table.

THE CHECK ISN'T IN THE MAIL: WHAT TO DO WHEN YOU DON'T GET PAID

And you thought writing was the hard part! Sometimes getting paid is harder than pinching mercury, and not nearly as much fun. When I became the person who had to ensure freelancers got paid, I made a promise to myself: they would be paid on acceptance (not publication) and within 15 days of that acceptance. It wasn't about money. It was about respect. If you worked hard for me and the company I represented, you deserved our respect. I endeavored to honor freelancers by bestowing upon them one of the most respected things in our society—money.

Unfortunately, corporations don't always see it that way. The current trend in many large publishing companies is to hold off paying invoices for as long as possible. In the last company I worked for, new managers had instituted a *de facto* accounting procedure that stipulated freelancer invoices should be sat on until the freelancer screamed, longer if possible. I became the first editor with a phone block put on him by the accounts payable department.

As a freelancer, you will also get to experience the frustration, the living Hell, of corporate accounting offices. Here's what to do:

1. Make sure you have a contract.
   Please say this aloud with me: "Never work without a written contract." Sorry. You weren't loud enough. One more time: "Never work without a written contract." If an editor refuses to give you a written contract, you should do two things: (a) submit one yourself; (b) don't work until it's signed. Samples of contracts can be downloaded at the National Writer's Union site and the Science Fiction Writers Association. I've also included my own in Appendix 4. Help yourself.

2. Include an invoice with the completed manuscript.
   Do not wait on anyone to invoice you. Your invoice should include all information necessary for payment, a clear statement of the work performed, the terms for payment (usually 30 days net, meaning all of it within 30 days of receipt of the invoice). Microsoft Office has an invoice template that you see a lot of these days. Included in Appendix 2 of this book is a copy of the one I use. Feel free to steal it. You can even leave my address on it if you wish. I promise to forward your checks. Really.

3. Send it again.
   Make multiple copies of your invoices and fully expect to send in an invoice more than once, both to editors and to the accounts payable department. A common delaying tactic by accounting departments is to claim your invoice was "misplaced." And the dog ate their homework.

4. Keep all documents.
   Emails, love notes between you and the fact-checking department, contracts, invoices—everything that pertains to the assignment. Make and keep notes of phone conversations, especially when they include discussion of pay and rights issues. You'll need them at some point to resolve differences of, uh, memory.

5. Expect to be paid.
   Translation: Approach this aspect of freelancing in a professional and, if necessary, persistent way. Don't get huffy and rude. Calmly and pleasantly inquire about what is owed you, be helpful in resupplying needed information, get the

check, then decide whether it's worth partnering with that outfit again.

6. Report abuse.
   When all else fails, send professional letters of complaint to higher up officials at the publication, and if that doesn't work, your next step is the National Writer's Union and similar advocacy groups.

WHO PAYS FOR REQUESTED SUBMISSIONS?

> *"An editor asked me to make sure the featured craftsperson in my article sends images of six of the dollhouses she makes. Who pays for the postage? Can you tell me if the editor does, or do I? I asked the subject and she agreed to send them, so how do I do this? Hope you can help."*

Since the editor specifically asked to see the images, the editor should pick up the postage. But the cost would usually be handled as part of your freelance invoice as agreed to by the contract you signed. When you send in the finished article, you normally include an expense invoice and receipts to document each item. Questions for you: (1) Is the editor paying your expenses? (2) If so, what is the limit? (3) Will the cost of sending in images of these six houses put you over your limit? Avoid phoning again over a simple business matter like this. If the editor is paying your freelance expenses, then a simple email should suffice:

Dear Editor Big Bucks,

I checked with my subject about the cost of sending in images of the six houses you requested. The postage will be $XX for UPS (or FedEx, Airborne, etc.) delivery. If this is fine with you, I'll simply add the postage to my expense report.

HOW LONG SHOULD I WAIT AFTER SUBMITTING BEFORE CONTACTING THE EDITOR?

"An editor called me—three days after I mailed my query—and said she was interested in my idea but needed more information. We spoke for a few minutes then she said she'd get back to me. How long a time is reasonable for me to wait to hear from her before I pitch other magazines?"

That was a very quick, and therefore encouraging, response from an editor. I'd say that time is less a consideration right now than making sure the line of communication stays open so that you know what her final decision is: to give you an assignment or not. I suggest immediately writing a follow-up email or making a follow-up phone call, both of which are acceptable since the editor has called you. Simply say that you enjoyed talking and ask if she has had a chance to make a decision yet on your proposal. Say that you are excited about possibly working for her and that you are looking forward to her response.

Since an editor has taken the time to call you, she was more than likely interested and has the obligation to follow up on her phone call to you. If you have no response in three to five business days of trying to make contact, consider it a negative response and move on. And never take rejections personally and try not to shut the door on this editor or any others in the future. You do not know what may be happening in that person's office or at her magazine that prevented her from following up in the manner she would've liked. Business is business. Always be open to it. Put your personal emotions aside.

SHOULD I GET A BYLINE OR A TAGLINE?

"When I agreed to write a filler for a national magazine, the editor and I discussed a byline. Although the page

my work will appear on usually doesn't have bylines given, he assured me (because I asked) that I would get one. The article is finally getting to see print after nearly a year. Should I mention the byline or not?"

I wouldn't. It might come off as vain and amateurish—pros usually think in terms of pay and prestige of the publication, and have long gotten past the thrill of seeing their name in print. At least that's what you're supposed to pretend. Also, you don't really need it. It is your published work, whether or not it has a byline/tagline. If you use the published filler as a clip, you will send it in along with other materials clearly identified as yours. Besides, having a byline/tagline on it does not change the piece's length, its purpose (filler) or its quality. In my opinion, you should drop it. When you get paid, thank the editor for taking good care of you, then hit him with a hot idea for a feature.

Last point: Unless it's a long sidebar, usually you get a tagline for fillers, sidebars and the like. A tagline, if it appears, is usually at the end of the sidebar, flush with right margin, and set off by an em dash and in italics:

> This is the text of your filler for a national magazine. It will be inside a box usually set off with a rule, which is a thin line.
>
> *—WordFreak*

WHAT ARE MY OBLIGATIONS DURING THE FACT-CHECKING PROCESS?

"I've sold an article! Now the fact-checkers are calling me right and left. Every couple of hours, it seems like. They demand things ASAP. What are my obligations? How much time do I have to spend doing this?"

Congratulations on your sale! Now, cement the next sale to this ed-

itor by cooperating fully, quickly, and meticulously in the fact-checking process. As a freelancer, you're the brick layer. Your words are your bricks. Your job is to follow the master blueprint and put the exact number of bricks where you're told to. The quickest way never to get another assignment from that editor is to get into a debate over requested revisions or fail to supply requested fact-checking materials. In fact, many major magazines require fact-checking materials to be delivered to them by the article's deadline—sometimes via FedEx. While you can and should ask for clarification and even offer your own point of view on editing and fact-checking issues, never argue. In the end, it's the editor's budget and magazine, not yours. Same is true for the amount of rewriting done to your manuscript by the editors. It's their money and their magazine. If you don't like the way they work, move on to a place where you are more comfortable. Simple as that.

MY ARTICLE WAS KILLED. NOW WHAT?

> *"Last September I got a call from a national magazine wanting my story. They assigned me 200 words. I submitted the article and they paid me $250. In the contract it said that I could not publish the piece again until it appeared in their publication first. Trouble is, there was a problem when they tried to confirm information. The piece has still not appeared. So, do I still have to wait for them to publish the piece?"*

First, make sure their check cleared; the money is yours. Next, determine if the editors have killed the piece (decided they no longer plan to use it) or if they still have plans to run it with revisions to resolve the problem. If they've killed it, you are free to do what you want with it. But please find out what the problem was with the inability to "confirm information." Was a fact wrong? Did a source

disappear? Whose fault was it that the info could not be fact checked?

If they are still exercising their option to run it (holding it for future publication), you have to wait until they do so, as stipulated in the contract you signed. Some contracts put a time limit by which a piece must have appeared. If it hasn't appeared by that date, your contract with them is terminated and you are free to market it elsewhere as a first rights story.


*“Publishers use boilerplate contracts
to get as much as they can,
like car salesmen.”*

CHAPTER SIX

SERIOUS STUFF: ETHICAL & LEGAL ISSUES

- **Top 10 Questions about Copyright Permissions**
- **Do I Need Permission to Use Screen Shots?**
- **What Every Freelancer Should Know about Fair Use**
- **Contracts and Copyrights—Yours**
- **What Is Libel? How Do I Avoid Trouble?**
- **Do I Need Model Releases?**
- **Are Fam Trips Unethical?**

When I first attended a Rodale Press workshop on legal issues for editors, I was stunned by how much I didn't know, and by the fact that there weren't more editors and writers serving time in our nation's fine penitentiaries. Then I realized that if, as a freelancer, I hadn't known this stuff, then gosh, maybe the freelancers wanting to write for me didn't know it either. And if they made a mistake that caused trouble, I was responsible.

The blade of distrust stabs quick and red.

The bedrock of a freelancer's relationship with an editor is trust. Anything that softens that trust is bad. Anything that builds trust,

like, say, your expert knowledge of the "fair use" provision of copyright law, will make an editor smile—with confidence in you.

TOP 10 QUESTIONS ABOUT COPYRIGHT PERMISSIONS

Want a good reason to be well versed in copyright permission codes? As a freelancer, it's your job to get permissions. And the editor's rear end if you don't. Editors do not like getting calls from lawyers. Makes their stomach drop and skin prickle. Lawyers never call with good news—only when there's trouble, the kind that gets you noticed by people with "Senior Vice President" and other such scary titles after their name. If you, the freelancer, are the cause of that trouble, you will be made to pay, one way or another. So, do not let an editor hear you ask any of the following questions:

1. **Does giving full credit in the text substitute for permission?**
   Not at all: The law says that copyright infringement is the "unauthorized use." To be authorized, you must have permission before using it, not thanks afterward.

2. **I plan to write an adaptation of a copyrighted work, do I need permission?**
   Definitely: Adding a layer of copyrighted material (yours) to an original work does not negate that original work's copyright protection. This is especially important for screenwriters. An option on a previously published book or life story is essential before adapting it for the screen; otherwise, you could waste a lot of time. Agents and producers usually will not consider or commission a screen adaptation without a signed option agreement.

3. **Do works in the public domain require permission?**
   Sometimes: A work may still have legal protection once its

copyright expires. The character of Sherlock Holmes is trademarked; ideas may be protected under contract law; information may constitute a trade secret; and human beings have the right to control how their likeness and name are used. Make sure the public domain work is not protected in any of those ways.

4. **Should I wait to get permission until after the manuscript is done and I'm sure that the work is being used?**
   Definitely not: A copyright owner is never obligated to give you permission, or may charge whatever he or she wishes. Your work could become hostage to copyright permission. You could miss a deadline. You could get chewed.

5. **Do I need permission even if my work is for nonprofit, educational purposes?**
   Yes: In deciding copyright infringement, courts focus on what harm has been done to the value of the copyrighted work, not your motives. Harm can be done by a not-for-profit publication as well as a for-profit one. Unless you are certain that your use falls under the "fair use" provision of copyright law, you should acquire permission. Be conservative: it's better to know than not know that an author disapproves of your use.

6. **Do I need to get permission since the work I'm using is now out of print?**
   Yes. Out-of-print does not mean out-of-copyright. Out-of-print could be a temporary condition.

7. **Since I'm using only a small portion, am I covered under the "fair use" provision?**
   Not necessarily: The courts have no mathematical formula for

determining what is and isn't fair use. However, the courts have ruled, "you cannot escape liability by showing how much of [the] work you did not take." The prevailing issue is harm caused by your use, not the amount. Did your use cause commercial harm to the copyright holder? That's the bottom line.

8. **The work I'm using is a U.S. government publication. Do I still need to get permission?**
   No. U.S. government publications are not copyrightable. However, you must provide a full and accurate citation using your publication's preferred style guide.

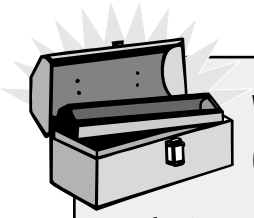
9. **If the work doesn't contain a copyright notice, do I still need permission to use material from it?**
   More than likely: For works created after 1978, statutory copyright automatically exists when the author first expresses his creation in "tangible form." Before 1978, works published without a copyright notice did indeed risk losing their protection. But not today.

10. **Do anonymous works posted on the Internet require permission for use?**
    Not likely but make sure: Copyright law specifically protects anonymous and pseudonymous works, but posting anonymously in hopes that others will share it is common on the Internet.

In sum: The need for copyright permission can be summarized thusly—When in doubt, don't do without.

DO I NEED PERMISSION TO USE SCREEN SHOTS FROM THE WEB?

"I have a publisher whose lawyers have asked me to get



WRITER'S TOOLBOX
COPYRIGHT GUIDES FOR FREELANCERS

- *The Copyright Permission and Libel Handbook*. Lloyd J. Jassin, Steve C. Schecter.
- *Every Writer's Guide to Copyright and Publishing Law*. Ellen M. Kozak.

permission to take screen shots from web sites to accompany site reviews. I recoil at this request, but am not sure whether I am on solid legal ground. Do you know what the state of the law is on whether a screen shot is the legal equivalent of a photograph? And if you know of no precedent, can you tell me whether you would seek permission before publishing a screen shot? If you don't have a policy, then this is my question: Would you seek permission from, say, a restaurant you were reviewing before publishing either the review or a photo of the front of the restaurant? I am certain that in asking permission, I will be asked by the people I'm reviewing to send them the text of my review. If they consider it unfavorable, I am betting that permission will be denied. Arrrggghhh...my tummy hurts!"

Do what the publisher's lawyers want you to do. From a legal perspective, it's the company's buttocks on the line, not yours. Regarding screen shots, it's my layman's opinion that, yes, you do need permission to use screen shots even if your usage is for criticism, comment, news reporting, teaching, scholarship or research (the allowed uses according to American copyright law's "fair use" doc-

trine). Screen shots, which contain the text and graphical elements of a web page, may include copyrighted work of a number of contributors, and therefore screen shots shouldn't be compared to printed texts. Remember that "fair use" is a defense in the event you are sued for copyright violation. Believe me, your goal as a writer should always be to avoid that situation by attaining permissions before publication, not legal exoneration afterward.

Second, although the subject being reviewed can ask to see prepublication copy, you are under no obligation to provide a subject prepublication copy for review or for any other reason. If the subject wants to give you permission, fine. And I suppose there is a safety and a goodwill element in asking in the first place. But there is no connection between giving copyright permission and having the right to see prepublication copy, which is a dangerous habit for writers to get into.

CAN I QUOTE FROM ANOTHER AUTHOR'S MAGAZINE ARTICLE IN MINE?

"I found a great quote in a woman's magazine. Should I give credit to the mag and the person they quoted too?"

There are three possible answers to your question:

1. If you're writing professionally for publication, the answer is no. You should get your own quotes. Quotes from secondary sources are not good journalism, except in a few special instances.

2. If you're writing for college, the answer is probably yes. This is the sort of thing that often passes for "research" in college writing courses, although some professors do not allow consumer magazines to be used as sources.

3. Whenever you use a quotation, it should always be sourced

not only to the speaker, but also to the speaker's identity and qualifications to speak on the subject:

Example: "According to John C. Fine, author of *The Hunger Road* and a former U.S. State Department official, 'Over 1 million children starve to death each year, and 6 million live in what the UN describes as absolute poverty.'"

WHO ACQUIRES PERMISSIONS: THE AUTHOR OR PUBLISHER?

> *"I'm planning on using some copyrighted material in a book manuscript I'm preparing. Should I go ahead and be getting permissions to use that material or is that something the publisher takes care of?"*

Definitely begin getting the permissions before the manuscript is finished. Acquiring them is your job, as is paying any fees required by the copyright owner. Usually the publisher supplies the author with guidelines for obtaining permission and blank permission request forms to do so. Please see the sample permission form (which you have permission to use) in Appendix 3.

When permission is necessary, you should contact the copyright owner or the owner's authorized agent. The copyright owner is named in the formal copyright notice that accompanies the original work. Because official notice is no longer required to obtain copyright protection, sometimes non-book publications lack the notice or include the name of someone who is not the actual or current copyright owner. Reference librarians can be helpful for finding actual names and addresses of copyright holders.

The Copyright Clearance Center (*www.copyright.com*) can also simplify the process by acting as an agent on behalf of thousands of publishers and authors to grant permission, but there is usually a cost. Remember that copyright owners have wide discretion when

responding to your request for permission. Your request may be granted or denied. If granted, it may be contingent on paying a fee. The fee may be modest or exorbitant. Copyright owners also have no obligation to respond at all. For nonprofit educational and research uses, you will usually find copyright owners to be cooperative. But there are no guarantees.

Before sending the permissions request form, a simple phone call can be helpful to establish exactly who should receive the form. If permission is granted to you verbally over the phone, the permission is valid. But in everyone's best interest, obtain the duly signed permission form for your files.

WHAT EVERY FREELANCER SHOULD KNOW ABOUT FAIR USE

Will you get in trouble for using someone else's work in your own? Depends upon your ability to apply the four-point "fair use test." In a nutshell: Fair use is an exception to the exclusive protection of copyright under American law. The fair use provision permits certain uses of copyrighted material without your having to obtain permission from the author or owner, if your use meets certain criteria. Before we review those criteria—the infamous four-point fair use test—here is the actual statute from the Copyright Law of the United States of America, Chapter 1, section 107. As a freelancer, you should keep a copy of it handy:

> ### § 107. Limitations on Exclusive Rights: Fair Use
>
> Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement

of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

—Contained in Title 17 of the United States Code. Text revised to July 2001

The four numbered points are the infamous "fair use test"—infamous because its ambiguity allows very different conclusions about the same use.

Working with the Fair Use Test

Each of the test's four factors has its own ambiguities. Convincing yourself that you pass the four factors does not insure that others, especially those whose work you may be using, will feel the same. However, the test is comprehensive and is generally a good indication of what you can and cannot do when it comes to using copy-

righted works. Courts must consider all four criteria together to determine which way the scales of justice tip. No one factor by itself can condemn you—or save you.

Factor 1: Purpose and Character of Use

The courts consider three elements when weighing purpose and character of use:

1. if your use was of a commercial or a nonprofit nature;

2. if your use involved any of the purposes stated in the statute's preamble: criticism, comment, news reporting, teaching, scholarship or research; and

3. the degree to which you transformed the original work in your use of it.

Predictably, preference in judgments has been given to nonprofit uses, but a commercial use does not automatically make you guilty, especially if your use involved one or more of the preamble's stated purposes: criticism, comment, news reporting, teaching, scholarship or research. Courts have been clear about protecting your ability to use parts of a copyrighted work to carry out the preamble's functions. The third element, transformation, looks at whether your new work supplants the original (not a particularly fair use) or whether it adds something new: a further purpose, new expression, new meaning or new message that contributes to public discourse. If it does, that tips the scale in your favor.

Factor 2: Nature of the Copyrighted Work

This factor considers a work's worthiness to be protected under the copyright law. Courts look at the original work in question and

try to determine where that work falls along the continuum of worthiness.

This factor acknowledges the reality that some works are simply more deserving of copyright protection than others. Court opinion over the years has established a "least deserving" end of the continuum comprised mostly of published works based on facts (the longer they've been published, the better). On the "very deserving" end of the continuum are unpublished works of the imagination that receive the most protection.

Factor 3: Relative Amount

This third factor looks at the amount and substantiality of the portion of the work you used. Some commentators have tried to say that using less than 3 percent is okay, but 30 percent or more and you're in trouble. The fact is, amount usually isn't the core issue.

The critical determination is the value of the materials you used, especially in comparison to your reason for using them. Courts recognize that using a whole work may be fair use in some circumstances (a teacher who copies an entire article for students), whereas using a tiny fraction of a work in a commercial publication may not qualify as fair if you can't justify its use as criticism, comment, review, teaching or research.

So, judgments aren't based merely on "small amount" and "more than a small amount," as some analysts have said. Quality and importance of the copied material must be considered. Some justices have looked to see that "no more was taken than was necessary" to achieve the purpose for which the materials were used.

Factor 4: Effect upon Potential Market

The last factor considers the extent of harm caused by your use to the market or potential market for the original work. This factor

takes into account harm to the original, as well as harm to potential derivative works.

This is the most important factor when determining fair use. If you injure the market for the copyrighted work, the entire scale tilts toward unfair use. The most egregious examples occur if you rob sales from the original, or if you are trying to avoid paying for permission to use the work in an established permissions market. On the other hand, tipping the scale in your favor are such factors as the original being out of print, or the copyright owner being unidentifiable.

The Beauty of Ambiguity

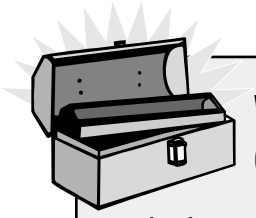
The fair use statute's ambiguity is both a curse and a blessing. As one U.S. Supreme Court Justice put it:

> *"The primary objective of copyright is not to reward the labor of authors, but 'to promote the Progress of Science and useful Arts.' To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art."*
>
> *—Justice Sandra Day O'Connor*
> *(Feist Publications, Inc.* vs. *Rural Telephone Service Co., 499 US 340, 349[1991])*

The genius of United States copyright law is that it balances the interests of copyright owners with society's need for the free exchange of ideas. Central to this exchange is the concept and practice of fair use. Use it well.

CONTRACTS & COPYRIGHTS—YOURS

It's more important than ever these days for freelancers to become



WRITER'S TOOLBOX
ONLINE FAIR USE RESOURCES

- Lloyd Jassin: *www.copylaw.com*
  Web site of copyright lawyer Lloyd Jassin, co-author of *The Copyright Permission and Libel Handbook*.

- U.S. Copyright Office—Copyright Search: *www.loc.gov/copyright/search*
  Allows a search for copyright holders of books, music, serials and other documents.

- Why and How to Register Your Articles:
  www.asja.org/pubtips/copyrite.php
  A primer on copyright prepared by the American Society of Journalists and Authors Contracts Committee.

- Copyright and Electronic Rights—Laws and Agencies:
  www.canauthors.org/links/copywrite.html
  Prepared by the Canadian Authors Association, a descriptive document of web resources for U.S. and Canadian writers.

- Copyright and Fair Use: *www.fairuse.stanford.edu*
  Resource page from the Stanford University Libraries.

- The Fair Use Test: *www.benedict.com/info/fairUse.asp*
  Informal, plain English explanations from Benedict O'Mahoney's award-winning copyright web site.

their own experts in understanding and negotiating the copyright portions of contracts, especially e-rights. Here's why.

First, you've got your electronic revolution: Since the explosion of the world wide web in 1995, the periodical publishing industry has been engaged in a massive land-grab of electronic rights as they try to launch new e-ventures and drive them to profitability.

Unfortunately, many of those publishers want freelancers to bear a substantial portion of the financial risk of these new ventures by demanding a writer's e-rights for free along with print rights. Others have simply stolen e-rights.

Imagine musicians getting paid only when someone buys their CD, not when the same songs are played on the radio. Or, as another writer put it, imagine building an apartment complex and charging renters only one month's rent for the rest of their life.

Next is the repurposing of content: Today's publishers have found a profitable model for taking previously published content and creating new products to sell, thereby cranking up profit margins on things like special issues, anthologies, foreign editions, CD-ROMs, fax-on-demand, not to mention electronic databases.

And then there's consolidation: Periodical publishing, whether newspapers or magazines, is being done by fewer and fewer, larger and larger corporations. They've got legal muscle and publishing contracts longer than the article attached, with the standard impenetrable legalese to match.

The result: Blithely selling all rights today will make you a publisher's sweetheart and a mortgage company's nightmare. Time to get back to basics: *If profits are being made from a work that you created and own, why shouldn't you be getting some?* Rhetorical question, of course, but it's amazing how many freelancers don't ask it. Wish I had a nickel for every time I sent a freelancer the boilerplate contract given to me by the corporate legal eagles and got it back signed with a flourish and no changes, giving the company ownership of the writer's work in "all media whether now known or hereafter imagined or created."

Yes, editors and publishers will try to take as much as you give them, just like used car salesmen. So, you'd better know how to read a contract, identify what's valuable, and negotiate to the limit of your self-interest, not the publisher's.

Never Work without a Contract

Speaking of basics: There are few absolute statements that don't leak worse than a Congressional Sub-Committee, but this one comes close—*never work without a contract*. Having a contract in place is standard business practice, even among friends. Don't learn the hard way that contracts are like medical insurance: they're there just in case. No one plans on getting cancer. No freelancer expects to get into a dispute. But when it comes to money, disputes are—sooner or later—inevitable. Thus a contract's first benefit: protection for you in the case of a dispute. A contract gives you a way to resolve that dispute without mediators, lawyers and judges.

Contracts also help you avoid the honest misunderstandings that are the basis of most disputes, whether it was a deadline date or the amount of an expense check. Because contracts spell out expectations on a number of issues, they force you and others to focus attention on all aspects of your business relationship.

Finally, a contract allows the stipulation of "material terms" (those related to subject matter, payments, quality of work and duration of the contract). Indefiniteness or absence of these material terms could be used to show that a valid contract never existed.

Top 5 Myths about Contracts

Myth 1: A Valid Contract Must Be written

Some types of contracts must be in writing: The Copyright Act requires all transfers of copyright ownership to be in writing. But as a freelancer writing for periodicals, you aren't transferring ownership; you are licensing your rights. As a result, your publishing contract can be oral, written or electronic, formal or informal. It's certainly best that a contract be detailed and written, but don't believe a publisher's claim that a prior verbal agreement isn't valid because no written document exists.

Myth 2: If a Publisher Sends Me a Check and I Cash It, I Have Agreed to the Publisher's Terms

Not true. Payment does not constitute a contract. A contract must be agreed upon by both parties in order to be valid.

Myth 3: An Altered but Signed Contract is Valid

Not unless the change is initialed. For any stipulation in a contract to be valid, both parties must agree to it. By crossing it out, you have indicated it is unacceptable to you, but the change must be initialed and agreed to by the publisher or publisher's representative in order to be valid. And vice versa.

Myth 4: When I Sign a Contract, the Publisher is Buying My Work

Unless it is a work-for-hire contract, as an independent contractor (freelancer) you own what you write. You do not sell your work; you sell the right to make copies of it: "copyrights." Indeed, a legal term for a publishing contract is an "Assignment of Rights" contract. Only work-for-hire employees sell their copyright.

Myth 5: Freelancers Who Try to Negotiate Contracts Are Freelancers Soon to Be Unemployed

Just the opposite: Continually giving away rights to your work without adequate payment is a much surer way to rejoin the ranks of corporate drones.

What Should a Contract Contain?

As a general rule, more rather than less. To be specific:

1. Names and addresses. Official contact info so nobody can claim that they didn't get something because you didn't send it to the right place. And vice versa.

2. Dates. For which the contract is effective; necessary for the contract to be legally valid and enforceable.

3. Your status. It should be clear that you are a freelancer or independent contractor, not a work-for-hire employee, if that is not the case.

4. Title of the work. Can be a working title.

5. Due date(s). Can include a schedule of deadlines.

6. Grant of right clause. Rights being purchased and the media to which they apply.

7. Compensation. Get what you want now or forever hold your peace.

8. Payment terms. When your compensation is due—standard is "net 30 days" (full payment within one month). This section can also include a schedule to allow for an advance, etc.

9. Late payment penalties. Standard business practice. Also consider giving a reward for early payment: If the agreed-on fee is $1,000, lower it by 2 percent to $980 if paid in 15 days. You can make up the $20 by paying your own bills on time.

10. Writer's obligations, liabilities and warrants. Publishing companies have a right to protect themselves, just as you do, from the unscrupulous. These clauses normally deal with the quality of your work and its legality, especially plagiarism.

11. Termination conditions. Stipulation of payment of kill fees

or cancellation fees if the contract is terminated before completion.

12. Expense reimbursement. Expenses should be payable within 15 days of submitting your expense invoice and receipts.

13. Byline or tagline. How you wish your name to read as well as any associated credit line, e.g., "Head Writer" instead of "Writer."

14. Contributor copies. Should be provided to you free.

Getting It Right, Getting It Good

The heart of this financial exchange called a contract is item #6 above: the "grant of right" clause that describes what rights you are licensing (not giving) to the publisher and for how long you are licensing them. The first thing to tell yourself is that, as copyright owner, you have a bundle of rights that you may assign in any manner you choose. Before beginning negotiations, it's helpful to make a priority list of rights from that bundle that you "must keep," "would like to keep," and "don't expect to keep." The "must keep" list usually consists of dramatic, broadcast and merchandising rights. "Don't expect to keep" usually includes second serial rights and book club rights. The rest is probably negotiable to some extent.

The second thing to tell yourself is that, as a freelancer, you go into a contract negotiation owning all the rights and the licensing of them. You are in control. You have something that somebody else wants. You have some leverage. The law of supply and demand is at work. You are the supplier. Here's what you have to sell:

All Rights

This license leaves you with very few: no reprint or anthology

rights, no digital or other media rights. In fact, unless your contract states that rights revert to you at some point, an all-rights contract can mean that you may not use your work again for a long time. All-rights contracts are common for many smaller departments and fillers, where your chances of reselling are slim anyhow. Beginning freelancers are often forced to accept all-rights contracts in order to nail those crucial first bylines. Later in your career, especially with longer pieces, there is usually little reason for a freelancer to give up all rights to his or her creations. Nonetheless, ask if a phrase can be put into the contract reverting the rights to you after a period of time.

E-Rights

The electronic rights to your work (its digital form that can be published via the Internet on web pages, in email newsletters, CD-ROMs, e-databases and so forth) are now fully protected thanks to several court cases. The courts, including the U.S. Supreme Court, have made it clear that an author's e-rights are distinct from any other copyrights and not automatically granted to a publication unless an author expressly licenses those rights. That said, e-rights are currently being sold for very little, usually 5 percent to 25 percent of the amount paid for first publication rights. At many publications, licensing of e-rights is expected without further compensation.

First North American Serial Rights

This is the most common copyright licensed to periodicals. Remind yourself, when reviewing a contract, that FNSR does not include anthology rights, reprint rights, e-rights, subsidiary rights or foreign rights. FNSR means only:

- "First"—you are warranting that the publication you are selling to is the first to publish it and the work has never appeared in any other copyrighted publication.

- "North American"—the agreement includes publications in Canada, the U.S. and Mexico, but not elsewhere.

- "Serial"—publications that appear periodically, as opposed to books.

- "Rights"—the permission to publish your work.

One-Time Rights

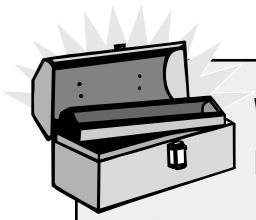
Also known as "simultaneous rights," this clause gives the publisher the nonexclusive right to use your work one time, but you don't guarantee the same work won't appear in other publications. One-time rights are appropriate when selling the same work to non-competing markets (see "Hidden Freelance Market: Newspaper Weeklies and Dailies" in Chapter 4).

Reprint Rights

Also called "second serial rights." Reprint rights give the publisher the right to print something that has already appeared in another publication. Reprint rights are by definition nonexclusive.

Subsidiary Rights ("Sub Rights")

Subsidiary rights are those that may be used secondary to print publication: electronic rights, performance rights, audio book rights, book club rights, foreign and translation rights, movie and television rights, anthology rights, merchandizing rights, etc. The licensing or sale of sub rights is usually to a third party and proceeds of the sale go to the publisher and author. If the publisher wants some or all of your sub rights, it is important that you ascertain if the publisher has the means to exploit them. Otherwise, those rights will be tied up unnecessarily and unprofitably.



WRITER'S TOOLBOX
LEGAL REMEDIES

The purpose of business contracts is to avoid getting to this point. Nonetheless, smelly stuff happens. If you've exhausted your personal supply of patience and diplomacy, it may be time to take advantage of the legal and quasi-legal services of one of the national-level writer organizations:

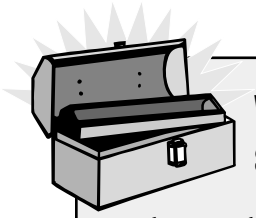
- American Society of Journalists and Authors: *www.asja.org/cw/cw.php*
  ASJA's "Contracts Watch" is a free service from its Contracts Committee. "Contracts Watch" collects and publishes contract information for freelance writers, keeping you informed about the latest terms and negotiations in the world of periodicals, print and electronic publishing.

- Canadian Authors Association:
  www.canauthors.org/links/writing.html#national
  Maintains a list of all Canadian writer organizations.

- Editorial Freelance Association: *http://the-efa.org/Code4.html*
  Publishes a "Code of Fair Practice" and maintains a Fair Practice Committee to provide guidance and assistance in these matters to members.

- National Writers Union: *www.nwu.org*
  Besides the helpful page on contracts, copyrights and negotiations, NWU members in good standing can obtain grievance assistance or contract advice by sending email to: advice@nwu.org.

- Periodical Writers Association of Canada:
  www.pwac.ca/who/committees.htm
  Provides a mediation service to help resolve disputes between members and their clients. Also open to publishers who use the PWAC Standard Freelance Publication Agreement in dealing with PWAC members, against whom the publisher may have a complaint.



WRITER'S TOOLBOX
SAMPLE CONTRACTS

These can be downloaded and altered for your own use; however, the groups and individuals who wrote the templates assume no liability regarding your use of them. Included in Appendix 4 of this book is a copy of two contracts I use. You're welcome to adapt them for your use with the stipulation that I am not liable for any consequences of such use.

- Standard Freelance Editorial Agreement: *www.editors.ca/pubs/contract.htm*
- Standard Journalism Contracts: *www.nwu.org/journ/jsjc.htm*
- Internet Writing (Writer's Guild-East): *www.wgaeast.org/mba/internet/internet_agreement.html*
- Freelance Assignment Agreement: *www.austinidealist.com/samplecontract.html*
- Freelance Publication Agreement: *http://shopmystate.com/Agent/Writer-AGREEMENT2.pdf*
- Sample Copyright Development and Transfer Agreement: *www.lawforinternet.com/pdf/WorkforHire-Contractor_Extra.pdf*

WHAT IS LIBEL? HOW DO I AVOID TROUBLE?

"What are the nonfiction writer's restrictions in using real names of people in a disparaging way? How far can you go legally? Can you change the names and be safe? Public figures seem to be fair game but how about government agencies and their employees?"

You have just touched upon one of the most complex issues that a journalist must face today. It's also an area where you can't afford to make mistakes. You are exactly right that public figures are treated differently, so are public officials. But the differences can be fine. Luckily there is a guidebook for us: the "Briefing on Media Law" portion of *The Associated Press Stylebook*. And if you want to know what it says, you've got to go to the library or pay for it. You can order it online at the AP's web site. Accept no substitutes: *www.ap.org/pages/order.html*.

Here is a brief guide to libel and slander as I've come to understand them through cases I've been involved with:

Libel, Slander and Defamation

Libel can be personal libel or trade libel, which is also known as "product disparagement" and can include a product, service or company. Libelous statements are published statements that are false and damaging. Slander is the same as libel in most states, but in spoken rather than written form. The terms "libel" and "slander" are often subsumed under the term "defamation." It is a tort (a wrongful act) to harm another's reputation by defaming them. How do you know if you might defame someone or something in what you are considering publishing? There are three tests which the defamatory statement must meet in order for a plaintiff to prevail in a suit against you:

1. Untrue. In order to be defamatory, the statement must be untrue. If the statement is true or substantially true, then it is not defamatory, and the case is over.

2. Damaging. In order for the plaintiff to prevail, the statement must have caused real and substantial harm to the person or business. The plaintiff must present evidence of substantial harm done.

3. Knowingly false. The plaintiff must also show that the defendant knew the statement was untrue, but published or broadcast the statement despite that knowledge.

From this brief explanation, you can deduce that the best way to avoid a libel charge, or to defeat it, is to: (1) Write only that which is true and can be shown to be true through your meticulous research and note taking; (2) Keep all research for a period of years, depending on the statute of limitations that applies where you are. In sum, you can say or publish just about whatever you wish in our open society—so long as it is true.

Regarding your comment that public figures "seem to be fair game"—you are correct in that public persons and private persons are treated differently. But I don't agree that they are "fair game." Since a freelancer's writing often concerns public as well as private people, it's important for us to know the boundaries of the playing field.

Public Official vs. Public Figure

The same liberal rule applies to both categories: To prevail in a libel case against you, in addition to showing that the statement is untrue and caused significant harm, a public official or a public figure must also prove "malice"—that you acted in reckless disregard to the facts known to you and with intent to harm. Obviously, because of this stipulation, you enjoy considerable protection when it comes to public personages, since proving malice (intent to harm) places a heavy burden on the prosecution.

Who are these public people? The status of "public official" is relatively easy to determine from public records. The trick comes in determining who falls into the category of "public figure."

The courts have determined that there are two types: A "general purpose public figure" is someone who enjoys social promi-

nence. Entertainers are in this category. But there is also a "limited purpose public figure"—someone who has intentionally placed themselves into prominence, such as a vocal activist on a given issue. The reasoning is that the press has a First Amendment duty to report on such newsworthy people, and therefore published statements warrant such protection.

Who is a private person? None of the above. Now you see why lawyers get the big bucks.

CAN I BE SUED FOR LIBEL WHEN WRITING FICTION?

> *"I want to write a book on a person who lived over a hundred years ago. He was somewhat of a character and from what I've been able to come up with on him, the information would make a great story and maybe even a better movie. My problem is this: Even though he was written about several times and was in the public eye for several years, there is very little information about his personal life. After six months of part-time research I am feeling like there may not be enough on his personal life to fill in a good book or movie. I have been unable to even come up with any present day relatives.*
>
> *"The answer to my problem would be to fill in areas of his personal life with fiction. Can this be done? Are there any disclaimers that would have to be mentioned about the accuracy of the life events? Would any long lost relatives be able to cause a problem on any of the fictional events? I'm sure many books and movies drift back and forth between truth and fiction, but I'm a little unsure how to proceed without knowing the legal implications for libel. Thanks for your help."*

Yes, you can fill in the gaps with fiction. And, yes, there are possible

legal implications, which vary according to the publication format you choose: movie, historical fiction, historical biography.

Movies and Life Rights

Before a producer would touch a property about a real-life figure, there must be some sort of "life rights" agreement in place. Producers pay subjects for the right to tell about their lives. In return, a life-rights agreement usually gives the producer the right to change elements of fact in order to make the movie. This is why you see the phrase "based on a true story" under a movie's title. The work has some basis in fact, but the viewer is also being warned that not everything they're about to see really happened. Before you write a screenplay, you should either acquire the life rights or have a very clear notion that life rights aren't required, which is likely in the case of someone who lived over 100 years ago. Same for any book you wish to adapt for the screen: get the option on the book first, before you start writing.

Historical Fiction

So long as you have at the beginning of the book the usual disclaimer—"This is a work of fiction. Any similarity to real people, events or places is purely coincidental"—you should be fine from a legal point of view if filling in the gaps with plausible fictions. All the names must be changed. In this case, you would be using the real person's life and times as the basis of the fictional work. You are correct: this is done quite often.

Historical Biography

Here you must be as accurate and truthful as possible, to the extent that you (and your publisher) could defend your work in a court of law. The key is truth—so long as what you write is true, any libel suit against you will always fail in an American court. It doesn't sound as if there is enough info for you to do a biography.

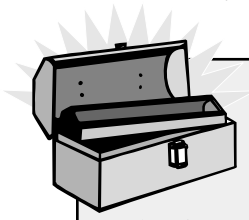
DO I NEED MODEL RELEASES TO PROTECT MYSELF FROM LAWSUITS?

"Some of the photography I'm sending in with my article contains pictures of people that I took myself. Should I have gotten model releases?"

Whenever you use a photograph of a person without a written release form, you risk being sued for invasion of privacy. A conservative guideline: If the identity of the individual can be discerned in the image, then you should secure a model release from that subject to protect yourself. If the subject is unrecognizable in the image, then you're probably okay.

A model release is a consent form signed by a photograph's subject that gives you permission to publish the photograph without invading that person's privacy or copyrighted image. Professional models often have strict limitations on how their image can be used.

Generally, the photographer's right of free expression is not



WRITER'S TOOLBOX
MODEL RELEASES AND PRIVACY

- See Appendix 5 for a copy of a model release used in the "Kids Wanna Know" TV production.
- Sample online model releases:
  www.pdnonline.com/businessresources/modelrelease.html
  www.istep.com/photostop/Legal/adult_release.html
  www.istep.com/photostop/Legal/minor_release.html
  www.apogeephoto.com/mag4-6/adultlon.htm
- Online legal discussions of model releases:
  www.apogeephoto.com/mag4-6/mag4-6model_releases.shtml
  www.danheller.com/model-release.html

questioned if the subject of a photograph is newsworthy. This is what allows paparazzi to harass celebrities anytime they're in public. However, the privacy rights of a non-newsworthy person can prevail when the image is used for a commercial purpose, especially in trade or advertising. In some states, "trade or advertising" includes only promotional materials, not editorial. In other states, any money-making use, including editorial use, could require permission. As you can see, there are no hard and fast rules in this area, only ambiguity and contradiction. "Hooray!" shout the lawyers.

It's best to get a model release from anyone who is recognizable, and especially permission from the parents or guardian of any minor. Caption the photo correctly and make sure it wasn't taken while you were trespassing on someone's property.

WHAT'S THE DIFFERENCE BETWEEN A FAM TRIP AND A PRESS TOUR?

> *"I'd like to know the difference between a fam trip and a press tour. I've been published several times, but have just taken my first expense-paid press tour. A friend said I took a fam trip. What's the difference?"*

"Fam trip" is the term heard most often from PR agencies trying to promote their travel-service clients; it's short for "familiarization." "Press tour" is the more traditional term. For example, the Army may arrange a press tour of its frontline positions in Afghanistan, or a press tour of a new battleship or the newly remodeled White House wing. The phrase "press tour" is usually heard outside the travel industry and the promotions game. But sometimes PR flaks try to give their fam trips more prestige by calling them press tours.

Regardless of what it is called, be careful of any agreements you sign before going on a free fam trip. Some PR agencies want you to guarantee their client positive editorial at a certain minimum number of words, within a certain time frame. To do so would compro-

mise your ability to write objectively. If you're going to write a work-for-hire advertorial, have fun!

ARE FAM TRIPS UNETHICAL?

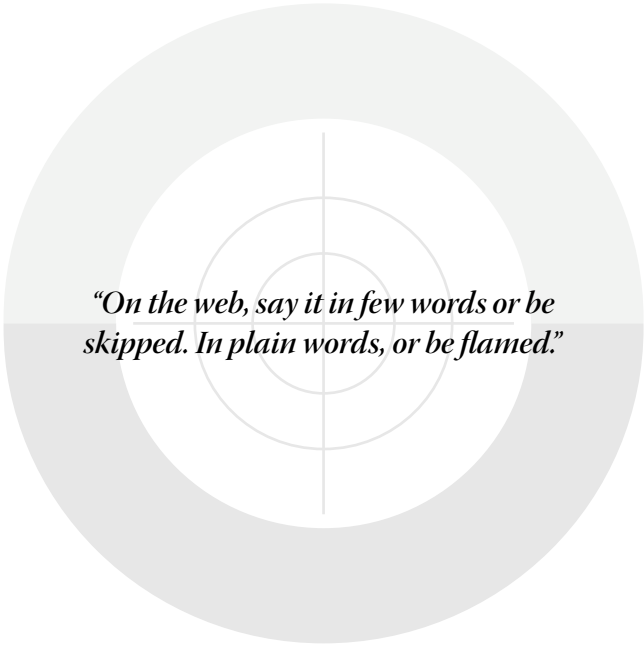
> *"A while back you helped me understand the difference between a press tour and a fam trip. I submitted a story idea to a newspaper. The editor wants the story—but, he says he cannot pay if it was a fam trip. I'd like to write it for free. What do you think?"*

First, I've never heard of a similar policy (not paying a freelancer because he or she was on a fam trip). I suspect it is peculiar to this editor, if it's true. I don't know the editor, and my policy is always to assume the best about someone until proven otherwise. So, for now you can assume that the editor truly has an ethical concern here. On the other hand, it could be about his wanting to save money and take advantage of a first-time freelancer. That would be the cynical view, and I'd hold off on that, giving the editor the benefit of the doubt for the time being.

Next step: Ask the editor for some further explanation as to why having participated in a fam trip (which did not involve his newspaper) disqualifies you for pay. There's a contradiction at work: On the one hand, he considers your work worthy of publication, including research done on a fam trip. Yet that same work isn't ethical enough for you to be paid for it? I don't get it. The only other explanation I can think of: the editor may be running your story as a puff piece or "advertorial"—in which case you wouldn't be paid by the editorial department, you'd be paid by the advertising department.

On the whole, I think writing for free is a bad precedent to set for yourself and the freelance community as a whole. This is a business. A serious business. You want to be taken seriously as a writer,

one whose craft is legitimate, whose skills are manifest, and who has every right to be paid for application of those skills and the time you take to craft something for publication. Frankly, if a freelancer ever sends me a query and offers to write for free, I automatically reject it without reading anything else. It's a clear signal he/she isn't a pro yet. On the other hand, you have to start somewhere. And a clip IS a clip. No one else has to know (or should want to know or even has a right to know) how much you were paid. But ask yourself this: if you give this piece to him for free, what can you expect to be paid for the next one?



“On the web, say it in few words or be skipped. In plain words, or be flamed.”

An editor's insider secrets for selling every word you write.

The Freelance Success Book