Exploitation of the workers

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A worker sits in a small garret, using his or her spare hours to produce goods. He has another job, but not a very well-paid one. Sometimes he needs to purchase material to make his goods, and pays for this material from his own pocket. When the goods are finished, he hands them all over to a manufacturer who packages them up and sells them for a profit, none, or almost none, of which is given back to the worker. The worker also hands over any claim to the goods, which now become entirely the property of the manufacturer. The manufacturer will probably give the worker a sample of the finished product, but if the worker has been sharing his duties with another worker, they may have to argue hard that each of them should have one sample. What is more, if a customer of the final product is injured by it, and threatens to sue the manufacturer, the latter will say it's not his responsibility, but that the customer should sue the poor worker, who may thus lose even his garret.

It's difficult to avoid the word 'exploitation' coming to mind, but of course this is just what academics are doing when they sign contracts with publishers to write chapters for books, or even complete books. I have long been vexed by the typical publisher's contract that an academic author is expected to sign, and that most of us no doubt do sign quite regularly, and perhaps without a thought as to what it really entails. Things are changing slowly with some publishers: I first wrote about this topic in 1995 (Frayn, 1995) when the standard model was that the author assigned copyright in the work to the publisher. Now some enlightened publishers are asking the author, who retains the copyright, to grant a 'license to publish' to the publisher. But still this is not common, and not followed by many of the larger publishers.

The implications of copyright transfer really came home to me when my first single-author textbook was published in 1996 (Frayn, 1996). It was a book on metabolic pathways, which I sat at home drawing with an early version of CorelDraw, mainly on Sunday afternoons. Soon after the book's publication, by a small academic publishing house, I wanted to use one of these diagrams in something else I was writing. I just thought I'd check with the publisher (I was on good terms with the Editor) to say 'Of course, I am free to do this, aren't I?' only to be told that no, I would have to write and request permission every time I wanted to use one of my diagrams elsewhere (sorry, of course I mean by now one of the publisher's diagrams). I should add that they later relented and granted me a blanket permission to do this.

If you have signed a contract for a chapter or textbook recently, I would guess that the contract will be broadly similar to the many I have signed in my career. Let's examine some of the typical features of such a contract. First, the issue of copyright. I am stuck at present in discussions with a major North-American publisher who said, in discussion, 'Oh, that's OK, we only ask you to transfer all rights to us while the book is in print, then all rights return to you'; and, quoting from an email, "you are also recognized as the author of the contribution" (wow, that's generous). (To be more serious, the latter is a recognition of the author's so-called moral rights in the work: something that is usually omitted when we contribute chapters rather than entire books.) OUP usually, but not always, take a similar view, at least for contributors to multi-author works; I haven't felt so strongly about this because of the benefits of OUP to all Oxford academics. But Blackwell Science, now Wiley-Blackwell, have been quite happy with a 'license to publish' model for some years. My latest contract with them states "The Author hereby grants an exclusive licence to the Publisher during the full term of copyright... The Publisher shall include in each copy of the Work... a notice of copyright in the Author's name...". Perhaps legally it ends up not being very different from the 'standard model', but it certainly feels different to me as an author.

Then there are typically clauses about legal indemnity. The latest contract I am dealing with states (at present, I am arguing to change it): "The Contributor shall indemnify the Publisher and its licensees and assignees under this Agreement and hold them harmless from any and all losses, damages, claims, liabilities, costs, charges, and expenses, including reasonable attorneys' fees, arising out of any breach of any of the Contributor's representations, warranties and covenants contained in this Agreement...". The 'representations, warranties' etc refer to the fact that I have to vouchsafe that the material I submit does not contain anything it should not—libelous, plagiarised, etc. Whilst I am willing to vouchsafe to do my best in this respect, I can't be absolutely certain that nothing has slipped through: what if I criticise the work of another author, on what I believe to be scientific grounds—could that be turned into a libel suit? I'm not a lawyer and nor do I have any insurance that would cover me if things go wrong. This is the clause that I always think of as 'your house is on the line'. 'Ah,' you may say, 'your employer will cover you for that'. Not a bit of it. I took a contract recently to our departmental administrator, who referred it to Research Services, who in turn referred it to Legal Services, who responded in turn that "Legal Services don't usually deal with these types of agreements because academics publish in their own name as individuals and not that of the University." (Why the University takes this view is something I consider below.) So, if you sign up to such a clause, you are on your own. I have found that some publishers are willing to waive it, but most are not, and it's actually the clause that worries me most. Incidentally, OUP were quite happy simply to delete this clause when I challenged it a few years ago.

Less potentially serious, but perhaps more irritating, is the clause about reproducing other copyright material. Typically it is the author's responsibility to seek permission for reproducing material from another published work. And, in a standard contract, the author is also responsible for any fees incurred. I know it's true that most academic sources will not charge for reproduction of a
small portion of their work in another academic work, but some do, and more will charge if the reproduction is to be in a for-profit work. Before you sign off on this one, ask yourself, and indeed your potential publisher, why you should pay such charges, when it’s the publisher, not you, who is in this for commercial gain. In fact, although the ‘author pays’ model still appears to be the default, I have found that most publishers are willing to alter this one. There is also the question of whose responsibility it is to obtain these permissions. It can be quite a lot of work. In the first edition of my textbook referred to above, I guess there were 25–30 diagrams or tables that needed permission. It took me a long time finding out to whom I needed to write, sending off letters, sometimes being directed elsewhere, and collating all the responses—and almost every source required a specific form of wording to appear. (It’s become much easier in recent years when most ‘permissions’ can be requested on-line.) For later editions, I have insisted that it is stipulated in the contract that the publisher will deal with these issues: after all, I am a scholar, not a secretary, and requesting permissions is a purely secretarial exercise. This is acceptable to Wiley-Blackwell, but I haven’t tried it much with other publishers: and indeed have discovered recently that one major North American publisher reckons that this is automatically the Publisher’s responsibility. But it’s worth looking out for, if you will have many ‘permissions’ to deal with.

Of course, one certain way to avoid what might be seen as exploitation of the academic is to refuse to write such works. The typical book chapter is something that can take a lot of time, and may be read by very few people: generally, I suspect, more by students than by other academics, and hence may not amass many citations. Last year a colleague and I were asked to write a chapter on the regulation of blood flow through adipose tissue. (It may sound arcane but it’s our lifeblood: actually it’s yours too.) Our hearts sank. It would appear in a textbook on dermatology: no disrespect meant to dermatologists, but unlikely to do much for our reputations in the world of diabetes and obesity in which we normally operate. So why did we not simply say ‘no’? I’m quite clear about this. The thought that anyone else in the world might then be asked to write such a chapter, on a topic on which we believe ourselves (possibly quite unjustifiably: but it’s how we feel) to be the world experts, was sufficient to persuade us that we had to agree. And many of us write books, at various levels, and have diverse reasons for doing so: my textbooks on metabolism have come out of a desire to impart some of my love of the field to students just entering it. I am sure that for most of us, financial gain is not uppermost in our minds when we commit to such an undertaking.

What should be done? At the very least I would urge you to have a close look at the next contract you sign with a publisher. There are things you should definitely challenge: insist on a copy of the finished work for each co-author (not the default in most contracts); insist that the publisher pays any fees involved in reproducing other works; at least have an argument about the copyright issue, and if the publisher will not concede on that, insist on inclusion of a sentence such as ‘For the avoidance of doubt, the parties agree that the Author may reproduce up to 10% of the work in other scholarly works without the need to request permission from the Publisher, but provided that due acknowledgement is given to the source’. I have been successful with these challenges with most publishers. Perhaps in the longer term publishers will come to tire of these regular battles and the default contract might move towards something that more clearly recognises the work put in by the author.

Then there’s the curious issue of why the University does not involve itself. I know that, at least in the sciences, chapters and books do not count much towards RAE or REF, but still they are scholarly works and help to promote the image of the University as a place of scholarship. The University should recognise books and contributions to books as an integral part of academic activity. I’m not arguing for too much involvement of central administration or Research or Legal Services, but when we, as academics, are signing contracts with potentially quite far-reaching consequences, it seems odd to me that the University distances itself in the way it does. Normally our administrator can smell the term ‘contract’ from several offices away and whisk the offending article away before I can put pen to paper, to be scrutinised by some higher authority. And this opens up a can of worms. If the writing of books or book chapters is seen as a ‘personal’ thing, should I be using my laptop with University software for the purpose? I can see I may regret raising these issues.

I hope to have stirred up some discussion, but now I must go and warn my wife that I’m about to sign another contract and the house is on the line again.


Frayn, K.N. Metabolic Regulation: a Human Perspective (edn 1), Portland Press, 1996