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ANFASA

**ACADEMIC
AND
NON-FICTION
AUTHORS
ASSOCIATION
OF SOUTH AFRICA**

DEDICATED TO EMPOWERING AUTHORS

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Finding Common Problems and Common Purpose in South African Publishing

Academic & Grassroots Writing: A Wholly Logical Combination



**CROSS-BORDER
BOOKS**

A Porcupine Press Imprint

David Robbins*

An important meeting

Porcupine Press and its fledgling imprint, Cross-Border Books, had a meeting in February this year with Professor Nomalanga Mkhize of the Nelson Mandela University in Gqeberha. Professor Mkhize is the Head of the School of Humanities, and she had asked several academics from her departments to attend.

The meeting had been suggested by Dr Vusi Kumalo, a historian on the NMU staff whose work has been published in USA and Cameroon, but never in South Africa. In 2019, he had approached Porcupine Press in an attempt to rectify this unsatisfactory situation. It was only late in 2022, with the advent of Cross-Border Books (CBB) and National Arts Council funding support, that it became feasible to pursue the matter further.

Porcupine Press was represented by Gail and David Robbins. They told the NMU meeting that in the 13 years since its establishment in 2009 the company had seen increasing evidence of what

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* David Robbins is co-owner and supervising editor at Porcupine Press

“ They told the NMU meeting that in the 13 years since its establishment in 2009 the company had seen increasing evidence of what Porcupine now called ‘the South African books revolution’, and a burgeoning of grassroots writing. ”

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Porcupine now called ‘the South African books revolution’, and a burgeoning of grassroots writing. To counteract mainstream publishing disinterest in grassroots writing and the high cost of self-publishing, Porcupine had launched CBB, a project that would be run on a not-for-profit cross-subsidy basis to allow grassroots writing to be published and read by a population widely starved of books, and more specifically of books by and about themselves. A sliding scale of royalties would be paid to authors, which would mean that even those without financial backing would receive no less than the lowest royalties paid by the mainstream publishers.

The new vision

At this point in the NMU meeting, Porcupine introduced the idea that CBB, designed to ease the existing constraints on grassroots writers, should also be considered a viable outlet for academic writers as well.

No outcry of disapproval disrupted the meeting. Professor Mkhize lifted her pen to make a note of what had just been said. Encouraged by this response, the Porcupine statement was reiterated and deepened.

‘CBB has been built on the proven production and distribution abilities of Porcupine Press,’ Gail and David said. ‘There will be no need to reinvent those wheels. What makes CBB different is its vision and mission. The current publishing situation worldwide poses real dangers to the emergence of a new literary bedrock. Local books don’t sell enough, and what about the quality? Through CBB, grassroots writing will be encouraged and its diverse voices heard. We’ll leave quality judgements to a future generation.

‘If we turn our attention to academic publishing, the picture does seem somewhat gloomy. Only a handful of South African universities have publishing arms, and most of them are asking for author subventions to balance their accounts. This means that not a lot of academic research is getting into the hands

of the people who matter most – those millions of South Africans who inhabit the work-a-day world, and who through their taxes help to sustain our tertiary education and research institutions.

‘But we need immediately to stress,’ Porcupine’s CEO, Gail Robbins, said, ‘that Porcupine and its new imprint have no intention of attempting to interfere or in any way dilute academic publishing or its well-established processes and standards. We are well aware of and respect the reciprocal relationship between peer-reviewed research and research funding flowing into university coffers.’

When viewed from the grassroots world, there does seem to be something missing.

Amplifying the impact

Our country is not the most stable of places. Public services are not of the highest standards. Poverty and its peevish children – all the social ills that we can think of – seem insurmountable. High hopes for democracy have crumbled to disgruntlement, or worse. This is the background from which South Africa’s books revolution is deriving its urgency – and it is also this general socio/political background that is receiving deep attention from many academic researchers. What is missing, then, is an understanding of the value of teamwork, especially in a time of crisis.

Towards the end of the NMU meeting, the academics present were asked about their research involvements. All said they were involved, and here is a very brief summary of some of their subjects:

A political scientist said he was researching what he called the ‘make or break’ election looming before South Africa. Would our young democracy survive?

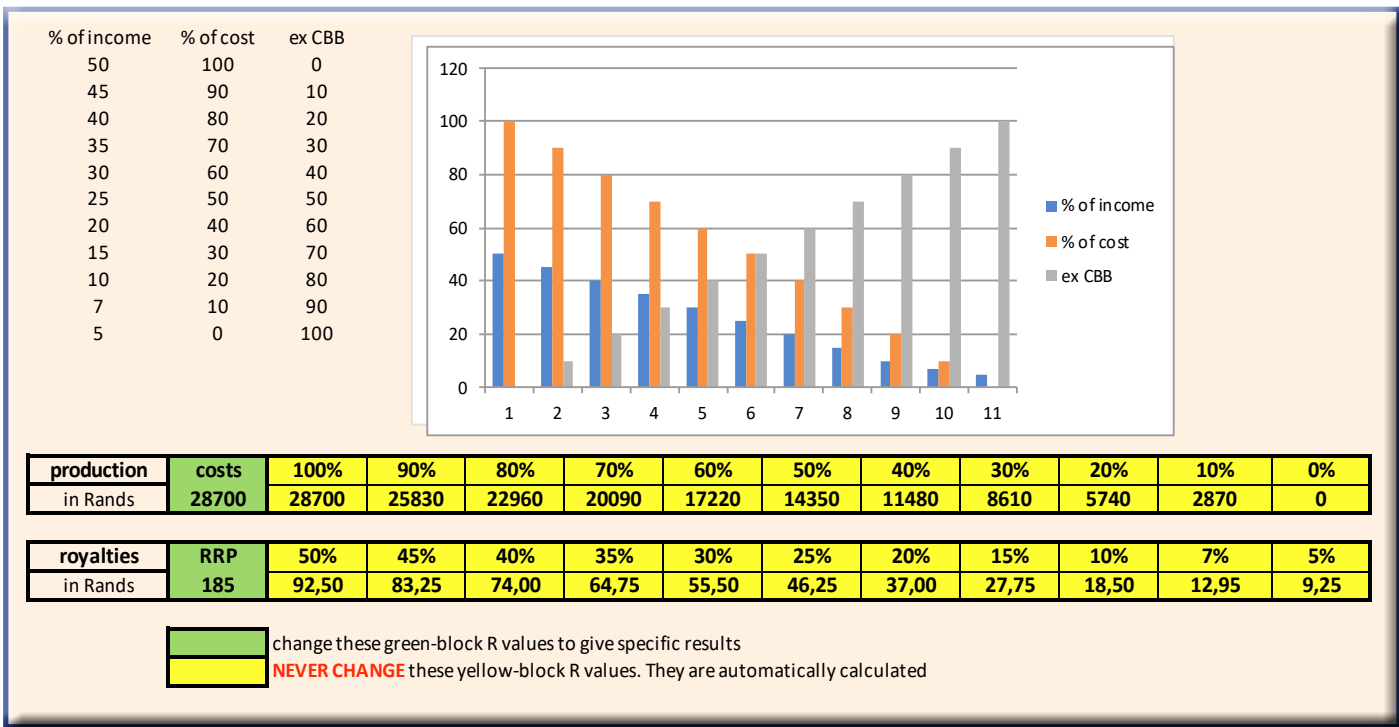
Another academic said she was looking at the unsatisfactory levels of service delivery in many local authorities and the ways in which this situation was fueling a surge of youth involvement in community affairs.

An anthropologist had become involved at the interface between African traditional healing and Western medicine.

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And one academic had homed in on workers from Karoo game farms who, having been released from their serfdom by new post-1994 legislation, now found themselves unemployed and living in shacks on the edges of numerous platteland towns.

Now look at a few of the grassroots books that will soon be available on CBB's new website:

- ❑ *In the Deep Divide*. A Shona girl, born in south eastern Rhodesia while the war for Zimbabwean independence was still in full spate, struggles to find her feet in the spiritual confusions of a transforming Africa.
- ❑ *The Women Brought Books*. A rural-born youngster goes through traditional male initiation. Later, studying at Tshwane University, he begins to realise that the initiation process might have links to the epidemic of woman abuse and rape afflicting South Africa. He embarks on a reading programme to find out more, assisted by a helpful librarian and his deeply interested girlfriend.
- ❑ *Trouble at Diepsloot*. A 16-year-old girl travels from Limpopo to rejoin her parents who have come to Johannesburg to work. They had found accommodation in the notorious

informal settlement. There, the girl witnesses a xenophobic killing, and the rape and murder of a newly acquired school friend. After inaction by the police, an angry crowd takes over and finds the suspect who is then necklaced. Finally, the girl is forced to face the thorny moral issues that these events bring to light.

- ❑ *Flanders and Limpopo Join Forces*. A north-south partnership between the Flemish universities in Belgium and the University of Limpopo in South Africa's most northerly province is described in detail. The partnership lasted ten years and the results helped to render an old apartheid university fit for purpose in the 21st century.

A perfect fit

Above all, these lists indicate that academics, especially in the humanities, and grassroots writers, wherever they live, are concerned with the same or very similar situations and themes. Only the point of view changes. The grassroots writers focus on their subjects from within the subjects themselves, so the hot breath of humanity pervades their work. The academic writers view their subjects from a vantage point.

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A sliding scale diagramme to illustrate publishing costs and potential royalties revenue

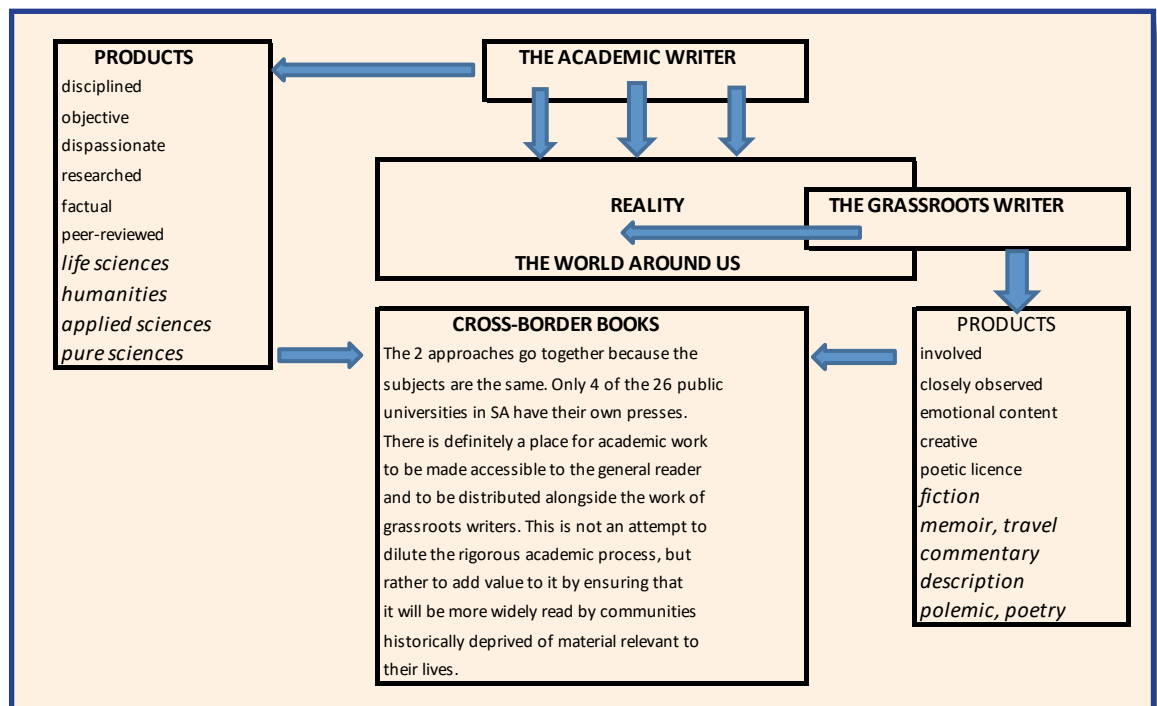
“Above all, these lists indicate that academics, especially in the humanities, and grassroots writers, wherever they live, are concerned with the same or very similar situations and themes.”

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They are emotionally once removed, yet their scrutiny is extremely detailed as they pursue answers to their research questions.

The two methods enrich each other. In short, they belong inextricably together; and this reality sits at the heart of the vision now driving CBB. But how will this new publishing venture – perhaps it's a revolutionary one – work in practice? What is already in place and what's in the pipeline?



This revolutionary publishing venture

Already in place is the entire publishing infrastructure developed over many years by Porcupine Press and now available to CBB. We're talking here about a team of professional editors and proofreaders, book designers, long-term relationships with top class digital and litho printers, in-house distribution into all the mainstream South African bookshops and Internet booksellers, and also through Porcupine's e-commerce bookshop where authors receive double the returns available from other book retailers. Also available are in-house and contracted marketing services.

There are important CBB add-ons that are currently being put in place. A new website, separately operated but linked to the Porcupine e-commerce facility, will be aimed into the international market with the intention of attracting grassroots writing from other countries onto the website. All books for sale in the CBB bookshop will be offered as print copies and e-books, with audiobooks as a desirable extra until they can be incorporated as part of the standard procedure for new titles.

What about the money?

Porcupine Press has always operated as a self-publishing outfit, providing authors with expert advice and

professional production in exchange for production costs. On an ad hoc basis, Porcupine has ventured into a more traditional form of publishing, where certain in-house services like editing, layout, and cover design can be provided at no upfront charge in exchange for a decreased royalty percentage of sales. This practice has developed over several years, based on an editorial decision regarding the market potential of the title concerned.

With CBB, the intention is to remove the essentially harmful restrictions (to building a literature from the ground up) imposed by a publishing methodology based on an author's ability to pay. The quality of the manuscript in question should be the only criterion. So the financial modus operandi that will drive the imprint will be based on a new sliding scale that relates the size of royalty payments on sales to the amount volunteered by the author to assist with production, distribution, and marketing costs.

In addition, to stabilise CBB at the beginning of its operations while sales are low and the imprint is gaining traction, it will be important to establish a Publishing Fund.

Since periodically it will be necessary to

All the stakeholders 'joining forces' to make the most of local publishing opportunities

“periodically it will be necessary to raise money to bolster the CBB publishing fund, it is intended to house the fund in an existing Section 21 not-for-profit company, African Narratives (AFNA), which has been placed on ice since COVID struck in 2020”

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raise money to bolster the CBB publishing fund, it is intended to house the fund in an existing Section 21 not-for-profit company, African Narratives (AFNA), which has been placed on ice since COVID struck in 2020 and closed down all AFNA's existing activities. This means that a Board will need to be reconvened and the financial accounts audited. These safeguards would encourage donations, crowd and corporate funding, and ensure that the 'not-for-profit' commitment is adhered to.

The importance of partnerships

So the ground work is dug and the foundations are being poured. But there's a long way to go. Partnerships are needed to help CBB to fly. The hunger to write has once again been confirmed. When a big national youth organisation advertised Porcupine's training programme – Grassroots Writing, the Basics – among its members and website visitors, more than 600 young South Africans responded. A short list of over 140 people with writing portfolios was selected. The one-day training session for 20 students took place at Constitution Hill early in March.

The need is there, and the market will be built through Porcupine's existing structures, and also via CBB's new website with its international focus. Productive relationships with academia are now a CBB priority.

After the NMU meeting in February, historian Dr Vusi Kumalo indicated that he fully supported the CBB initiative. He said: 'It will assist in creating public records of original contributions to knowledge produced by scholars and ordinary people. As a grassroots publisher, CBB offers an opportunity to people who have no power or influence to tell their stories, and encourages all South African writers to 'speak' directly to national and international audiences.'

When it came to academic works, Kumalo said he had been glad to hear that CBB would not be 'predatory' by putting profits first and publishing un-reviewed books, a practise that could severely harm or even truncate the academic careers of upcoming scholars. CBB must use



Cross-Border Books training session: a group of participants at KwaNobuhle, Eastern Cape

reputable academic reviewers who should make themselves available to assist CBB to maintain the highest possible standards.

'In conclusion, I believe that one of the strengths of the CBB initiative is that it bridges the gap between researchers and ordinary people who are often studied as a subject of research. Although academics claim that dissertations and specialist journals make scientific findings more accessible, these scholarly outputs are typically only read by likeminded scholars. But what about those ordinary people who are studied, let alone 'ordinary people' en masse? Do they have access to academic journals? Do they even know that such journals exist? Journals are highly specialised scholarly publications that study different aspects and problems of ordinary people. It is, therefore, important for scholars to also publish with CBB for accessibility to broader audiences.'

'But do "ordinary people" matter all that much?' ask Gail and David Robbins. Their answer is unequivocal. 'They matter massively in a democracy. They matter even more in a democracy under pressure and struggling to survive in the developing world. Inclusion must surely be the name of the game.'

“Ordinary people ... matter massively in a democracy. They matter even more in a democracy under pressure and struggling to survive in the developing world. Inclusion must surely be the name of the game.”

New Copyright Laws Will Kill Us All

Confessions of a Struggling Author

Owen Dean*

I am a struggling author. Don't get me wrong, I don't struggle to put the proverbial pen to paper. On the contrary, the words flow easily and in abundance. I fondly believe that I have a way with words – I receive complimentary comments. I have lots of stories to tell. I want to tell them. Why then, you ask, am I struggling? I will tell you.

I am an experienced attorney specializing in Intellectual Property Law, especially Copyright. I have written a text book on the subject and have published literally hundreds of learned articles in legal journals. I hold a doctor's degree in law (for which I wrote a thesis) and I spent some years as a university professor. I am an accomplished and successful academic author. I am not without writing skills. So what's the problem?

The simple answer is that I aspire to be an author of works of fiction for distribution in the popular market. It's not going well. Ay, there's the rub. Fortunately, I am not reliant on my output of fiction to earn a living. My day job takes care of that. Were it otherwise I would be in dire penury.

Having retired from active legal practice and academia I embarked on writing my first (of many?) novel. Inspired by John Grisham, whom I set as a role model, I wrote a story with a strong legal flavour. It is called *The Summit Syndrome*. Actually, it is basically a faction version of a truly astonishing and remarkable court case that I once handled ('names and places have been changed') with a lacing of sex and romance to add spice. It was eventually quite well received and enjoyed favorable reviews like "An absorbing and realistic portrayal of a riveting courtroom drama: once I started it I could not put it down" (an eminent former judge of the High Court), and "Dean delivers the requisite thrills and surprises of fans of courtroom dramas – recommended" (US Review of Books). However, a lot of water

"Fortunately, I am not reliant on my output of fiction to earn a living. My day job takes care of that. Were it otherwise I would be in dire penury."

*Owen Dean is Emeritus Professor of Intellectual Property Law at the Faculty of Law, Stellenbosch University and was the first incumbent of the Anton Mostert Chair of Intellectual Property Law until 2015. Prof Dean is currently a Research Fellow at the Chair. He has practised as a specialist Copyright Attorney for 48 years and is the author of the standard text book, *Handbook of South African Copyright Law*.



Owen Dean: Fiction a greater struggle than fact when it comes to writing

was to flow under the bridge before that stage was reached.

Being a seasoned copyright lawyer, I knew all the tricks of the trade when it came to publishing. I was well versed in all the deals and their permutations that an author could offer to a publisher to clinch a publishing contract. My name (as a lawyer and academic) was also well known in the South African publishing industry. I thought I was reasonably well placed (far more so than the average first time author) to achieve a publishing deal with a local publisher.

I knew that I could offer an outright assignment, or transfer of ownership, of my copyright in the work to the publisher. This assignment could have a lifetime of specified years, or for the

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full term of the copyright (my lifetime plus 50 years). I could seek remuneration in the form of an upfront, once off, lump sum payment, or it could take the form of royalty on a percentage to be agreed, on sales, or a combination of the two. I had complete freedom to negotiate a mutually acceptable deal on whatever terms were appropriate. Even, if I was desperate enough, for no payment at all – getting out into the market place would be sufficient compensation.

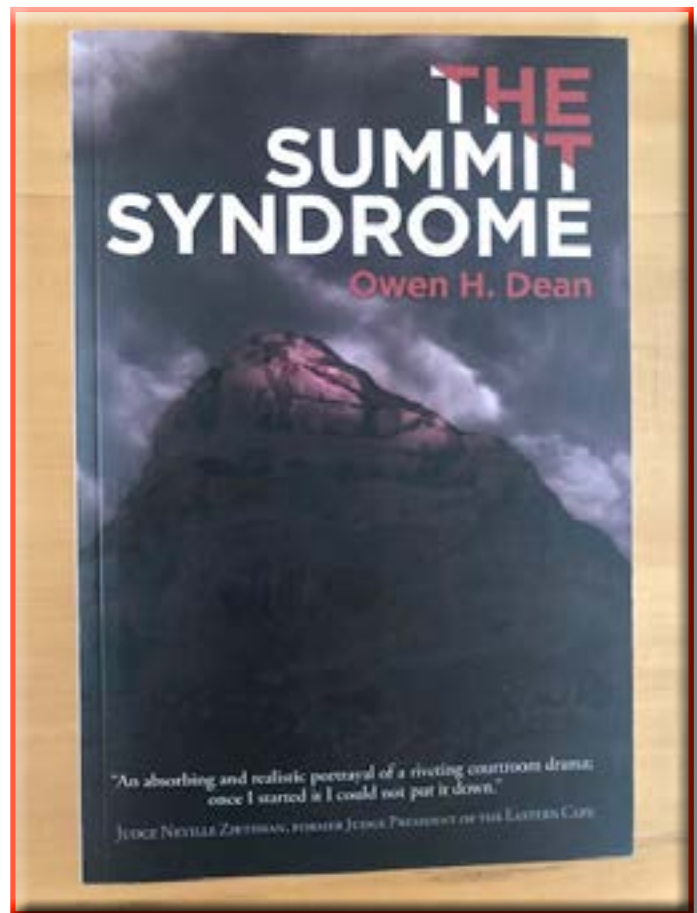
As an alternative to granting an assignment of copyright, I could have offered a licence to the publisher on similar terms to those discussed above. In terms of a licence, I would retain the ownership of the copyright and simply grant the necessary exploitation permissions to the publisher. As a general proposition, an assignment of copyright is more attractive to a publisher, while a copyright licence is more attractive to the author. The point is that there are a vast array of possibilities and permutations available to the author and the publisher to craft a deal that is acceptable to both of them. Complete 'freedom of contract' is the watchword. It even allows an author to grant publishing rights at no cost if this is what it takes to gain publication.

Armed with my arsenal of knowledge and status, and touting the brainchild to which I had given birth, I enthusiastically and optimistically embarked on the project of negotiating a deal with a publisher. To cut a long story short, I knocked on the door of virtually every publisher in South Africa. Without exception I never got beyond the door. I was told that their budget for publishing English language fiction was very limited, and my wonderful creation could not be accommodated.

Disappointed and disillusioned (all the pro bono assistance that I had given to the publishing industry over the years had counted for nothing), but unbowed and undaunted, I explored other options. As something of a last resort, I eventually reached an arrangement with one of many American publishers who offered assisted self-publishing packages. This entails their publishing, and marketing to a limited extent, your book in the normal way, but on condition that you make a sizeable contribution to the costs of the whole exercise. In other words, far from the publisher making a lump sum up front payment to the author, the converse applies. This is a far cry from the ideal position, but when you get desperate, what can you do? For the rest the more or less standard publishing conditions apply – you assign or licence your copyright for a specified period, and they pay you a royalty on sales (getting royalties paid out of America is another story). Even though you are largely paying for the publication yourself, these publishers are very rigid on the terms of the publishing arrangement (our way or no way!).

The bottom line is that publishing an English language fiction work in South Africa is currently an extremely difficult proposition. The alternatives available to South African authors are not very attractive and are almost nil to the lesser financially endowed. This rather unhappy situation prevails at the present time when the South African publishing industry is in a fairly healthy state.

Enter the Copyright Amendment Bill! If Government spin is to



be believed it will provide the gateway to the promised land of milk and honey for authors. Alas, the reality is that the contrary is true – the gateway is rather to a nether region.

Apart from the fact that government will be decimating the publishing industry by virtue of its bounteous gift of the liberty to make unauthorised copies of works on a widespread and wanton scale, freedom of contract for authors in the publishing field will become a thing of the past. Authors will be constrained to enter into compulsory rigid prescribed arrangements with publishers.

Assignments of copyright will be limited to twenty-five years, like it or not. Payment of royalties indefinitely by a publisher will be compulsory even though there may have been an assignment of copyright and even after an assignment or licence has expired. No flexibility on these issues will be allowed.

Gone will be the days when authors would be able to adopt nuanced negotiating positions, with customized income arrangements (even granting rights at no cost), in order to craft an arrangement with a publisher to induce it to enter into a publishing agreement. It will be a case of one size fits all, with little choice by either the author or the publisher (or perhaps in reality, one size fits nobody). An author cannot even grant a royalty free licence if he/she wants to do so.

Publishers will be obliged to pay royalties in all circumstances. These royalties must take the form of a share to profits.

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Royalties in this situation are generally based on a percentage of sales revenue. Save in the case of very successful books, this could operate to the detriment of authors, particularly first-time authors. Why would a publisher want to pay a lump sum initial payment (which may be greatly beneficial to an author in certain circumstances), when it is going to have to pay long term royalties come what may? Why would a publisher pay a purchase price for an assignment of copyright when it will in any event give rise to a sentence to pay royalties to an author on an ongoing basis? What effect does this have on the monetary value of an assignment? The copyright in his/her work is probably the author's greatest asset in this context. It will suffer serious devaluation if it is encumbered by an obligation to pay ongoing royalties.

I will give an example of this situation from my own experience. Some years ago I was approached by a publisher to write a non-fiction booklet, in the form of a so-called e-book, on my MBUBE/LION SLEEPS TONIGHT case. I agreed to do so but had misgivings as to the commercial viability of the project. I was offered a lump sum payment of R10 000 for giving assignment of the copyright. I was happy to agree these terms. As it turned out, I doubt whether the book made any profit. Had I opted for a royalty of a percentage of profits, I would have earned nothing. Freedom of contract allowed the parties to negotiate an arrangement of choice. After the elapse of a few years, the publisher re-assigned copyright to me, having no further use for it. The whole arrangement was very satisfactory. It would not work under the proposed new dispensation, freedom of contract having been abrogated.

An assignment could have a term of in excess of, say, seventy-five years, but it would now be restricted to twenty-five years, a third of the period. On the assumption that a publisher would normally be prepared to pay 100 for 75 years, it may now only be prepared to pay 33. It may well suit authors to take 100 now, rather than only 33 in the hope that they might after 25 years get more than 33 for the next segment of 25 years (this is apparently the logic). An author might not even live long enough to get the benefit of the second segment! He/she would be denied the right to choose his/her own destiny.

Of course, under the present dispensation, if an author chooses of his/her own accord to limit an assignment to twenty-five years it his/her good right to do so. That is what freedom of contract entails. There is the world of difference between having the right to make such a limitation at one's own discretion, and having it

forced on one from above in all circumstances.

Depriving an author of his/her freedom of contract seriously impacts on his/her fundamental right to pursue his/her livelihood in the manner that he/she chooses.

I have explained how difficult it is for us as authors to achieve a publishing arrangement, particularly in respect of a first work. This is currently so under relatively optimum conditions. What will be our prospects of success under the new regime? I can tell you – nil. Based on my experience even a publisher who operates a partially author-financed model of publishing would laugh at a deal proposed on these conditions. Authors will simply have their legs cut-off at the knees in this scenario.

The Utopia (or perhaps rather cloud-cuckoo land) dreamed up by the government is dependent on the continued existence of publishers. This will be an optimistic hope in the circumstances that will obtain. Without publishers no publication of works can take place, unless the government is minded to someday create a state publisher, yet another SOE, which can incur publishing costs and pay out royalties ad infinitum with gay abandon out of tax payers money and without the burden of having to generate revenue.

Although I am a struggling author, I am fortunate. In the gloom that will descend on creative careers I can walk away from writing and concentrate my energies elsewhere or rest on my laurels. But, what about those who aspire to make a career out of writing? They have

my innermost sympathies. Their prospects are grim. They would be better advised to rather become waiters in restaurants where gratuities are generally dependable and are paid in accordance with performance and the norms that go with the territory. The outlook is far brighter!

“Although I am a struggling author, I am fortunate. In the gloom that will descend on creative careers I can walk away from writing and concentrate my energies elsewhere or rest on my laurels. But, what about those who aspire to make a career out of writing? They have my innermost sympathies. Their prospects are grim.”

❑ **Editor's Note:** the *Daily Maverick's* site was hacked soon after publication and this essay disappeared, and to date has not been restored. When clicking on the relevant URL, browsers will be taken to the DM Page with the following notice: “Sorry! This page appears to have been captured.” Is this irony or fact? Who has captured Dean's article? For other articles by Owen Dean which have not been captured see: <https://muckrack.com/owen-dean/articles>

❑ **This article was first published in *The Daily Maverick (DM)* as: <https://www.dailymaverick.co.za/opinionista/2022-11-29-for-whom-the-bell-tolls-copyright-amendment-bill-sounds-death-knell-for-publishers-and-authors/>**