

# Payment Withheld: Can I Fight a Magazine Publisher to Get it Back?

*Article by: Dave Taylor*

A colleague of mine sent me a troubling question: "Dave, I recently submitted an article to a magazine I've worked with for a few years, and they accepted it without comment. A month passes and they've paid me 1/3 of the agreed upon fee, claiming that their staff had to completely rewrite it prior to publication and that cost came out of my recompense. That seems really unfair: is there anything I can do about it?" To clarify the issue, I asked my colleague to send me a copy of the article assignment letter, which is basically a contract between the author and the publisher that should - one hopes - detail exactly what's to be delivered and all the possible contingencies, including receiving a manuscript that isn't publishable. Before we look at the contract wording, though, what's odd about this situation is that the author never had an opportunity to fix the article or even any feedback saying that there were problems at all. Seems kind of fishy... **Receipt of Contributions** *Publisher* reserves the right of final approval of both the form and content of each contribution from the Author. *Publisher* may, as it deems desirable, adapt and edit or authorize the adaptation and editing of each contribution. *Publisher* may or may not publish a contribution at its sole discretion. So far, that's pretty typical. Notice that there's no mention of the possible cost of adaptation or editing in this clause of the contract. Let's continue... **Payment** In consideration of the services performed by Contributor hereunder and the rights granted and assigned hereunder, *Publisher* agrees to pay to Contributor, subject to the terms herein, an amount as set forth in Exhibit B. Again, that's pretty straightforward. The question is, what's actually written in Exhibit B and what kind of "kill fee" is detailed, if any. And here's the final clause, in Exhibit B, that punctures a hole in any sort of argument that the publisher may have with the author: Payment for each contribution shall not be made until such contribution has been approved for print in the magazine. In the event that a contribution is not accepted for print, the contributor shall not be entitled to payment. My reading of this is that it's an all-or-nothing contract. There's no legal provision that gives them the right to withhold partial payment for any reason: either the terms of the contribution are met as detailed in the Exhibit, or they're not, in which case "the contributor shall not be entitled to payment." If the difference is more than a miniscule amount I would suggest that you call up the publisher and say that upon further reading of your contract, you do not see that they have any basis for withholding 2/3 of your payment and that you'd like to see a check issued for the balance of the article payment immediately. And I'd consider finding a new publisher for your articles too. Please note that I am not a lawyer and that this should not be construed as any sort of legal advice. You proceed with my analysis and commentary at your own risk. Thanks. Dave Taylor is a professional writer who has been publishing since 1982. He's written sixteen books, including the best-selling *Wicked Cool Shell Scripts*, and *Creating Cool Web Sites*.

His latest projects are startup 101 and Ask Dave Taylor, where he's happy to take questions from writers about contracts and publishing.