

INDEPENDENT PERSPECTIVE

society for technical communication **STC**

Newsletter of the Consulting and Independent Contracting Professional Interest Committee Winter 1993/94

As a Grievance Officer for the National Writers Union, I represent some

figuring out how to get it. I rely on the writer's contract, but, too often,

Don't despair when a client says your manual is awful and s/he does

What to do when a client violates your contract



Contract advice from the trenches

by Michael Bradley

450 writers in the San Francisco Bay Area when they have disputes with publishers. This is the home of Silicon Valley, so there are more than a few contract technical writers among our members, nearly a hundred at last counting. They file about one grievance a month with the union. Here's something of what I've learned from handling their grievances. It supplements Dave Young's excellent two-part article that just ran in *Independent Perspective*.

Nearly all of the grievances have to do with not being paid. In about half these cases, the client claims, well into the project, that the manual is terrible, so the client is not going to pay the writer's invoices. In other cases, the clients are more creative and the disputes more complex.

It's my job to represent each writer's interests. In practice, this boils down to determining what a writer is actually owed and then

the contract is the client's own boilerplate. It protects the client from dangers known to the corporate attorney, but it doesn't anticipate the problems that are likely to arise in a documentation project and it makes little, if any, attempt to protect the writer's interests. It is often so vague about points that are crucial to writers as to be useless. Sometimes it's downright pernicious.

Use your contract

This being the case, it's important that writers use their own contracts, ones that cover the points outlined in Dave Young's article. When this isn't possible, try to attach riders to the client's boilerplate that cover the points the boilerplate doesn't. If this isn't possible, either, try putting the missing points in the project plan. This will serve nearly all the purposes of a contract, especially if you arrange for the client to send you a memo indicating agreement to the plan.

not want to pay you. It's just the client's way of saying, "There's something wrong here that I can't deal with, so I think I'll blame you." Talk to a friend about how badly you feel, then go back to the client and demand payment.

You must be paid

A basic tenet of employment law, even for contractors, is that a worker must be paid for the work s/he does. If you meet the requirements of your contract, a client has no right under law to refuse to pay you. It may be prudent for you to compromise in some way, such as reducing your fee for the rewrite, but don't abandon your claim to be paid for the work you have already done. Note that in every case I've handled, the writer met the requirements of the contract.

Why, then, did the clients withhold payment? Most of the time, the manuals had already gone through at least

(See *Contract*, page 6)

In this issue

Independent voices (letters)	2
From the editor	2
The Big Picture	2
PIC cooperation	3
Readers' favorites	5
A spelling plan	8

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PIC cooperation	3
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Dear Editor:

I'm writing to clarify a misconception about CompuServe pricing in Carol Watts's letter (Fall 1993).

Independent voices

Clarifying CompuServe charges

Before she received her bill, I hope Carol had long since discovered that the \$8.95 monthly charge for CompuServe basic services doesn't include any extended service time, certainly not 25 free hours. Extended services are billed

at an hourly rate that depends on the speed of the modem connection (\$6.00/hour for 300 baud, \$8.00/hour for 1200 and 2400 baud, or \$16.00/hour for 9600 and 14,400 baud on the Standard Pricing Plan).

Purchase of CompuServe software for Windows or DOS gives the user 25 dollars' credit toward extended service connect time. Once that credit is used up, it's easy to begin racking up charges quickly unless one is fast

with the mouse or keyboard and very disciplined about limiting time spent in the forums. Even so, despite my high bills when I first became enamored of the system, I've found the business information and vendor support available in the forums well worth the cost. I just hope Carol didn't get hit with a bill for 25 hours of connect time charges her first month as a member!

Sincerely,
Lanora Schoeny Mueller **IP**



From the editor

I hate to put this in print because I'm superstitious about such things, but I've got lots of work right now. Too much for me to do alone. So I've had to raise rates, refer jobs, subcontract, and in some cases collaborate to get jobs done. Including jobs that I had already contracted.

As much as I'm riding that anxiety-and-euphoria wave of being eternally too busy, in the back of my mind I

ponder the implications of my decisions. Especially those that center around trust, fulfilling obligations, changing how I do a job, maintaining quality.

This issue is meant for me. And some of you, too, I hope. I also hope that by the time I manage to assimilate the lessons included in it, I'll have a little bit of the flow left to practice on before I sink into the ebb.

Susan

Well, it's been a little more than a year since I was given responsibility for professional interest committees in STC, and I'm just now getting around to starting this column for PIC newsletters. How do you like the title? Snappy, eh?

What I want to do, from time to time, is try to let you who belong to STC's PICs know how

you can fit into the grander scheme of STC business and, more importantly, how PICs can fit into your grander scheme as your career advances.

STC's professional interest committees, I believe, represent an exceptional way for STC members to get the most out of their membership (See *Picture*, page 5)

INDEPENDENT PERSPECTIVE

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When I first heard about the Consulting and Independent Contracting Professional

nies in Winnipeg alone was large enough to give all of us enough work to last several life-

some of the work to her; if she needs help editing a report, I will give a hand—it's a comfort-

Clients, territory, and cooperation

*More from
Manitoba—how
their C&IC PIC
turned a thorny
subject into a
garden of
opportunity*

by Susan Haire

Interest Committee, I wondered how such a group could possibly work together. After all, the key word, as far as I could see, was *Independent*, implying someone who worked alone in an entrepreneurial business—in other words, the competition. But my first meeting quickly changed that view.

As we went round the table, introducing ourselves and describing what we did, I realized that there was very little overlap. Some of us specialized in writing software manuals, some in writing business proposals; some were translators and some were educators. Because of the size of our group, what overlap did exist was very small. For example, only three of us wrote software manuals, and even then we used slightly different tools—WordPerfect or Word for Windows, Ventura or Pagemaker. In contrast, the number of compa-

nies (of course, first we had to convince these companies that they needed us, but that's another story).

We quickly dropped our competitive attitudes



"We quickly dropped our competitive attitudes"

and relaxed (thankfully, I believe) into a more collegial atmosphere. As we continued to meet, I realized that I had been wrong about the importance of the word *Independent*. The word I had overlooked, indeed, the key word of every PIC, was *Professional*.

We began to feel that we could support each other in times of need—if I am having a problem finding a reliable proofreader, he will recommend one; if the job he is working on proves too much for one person, he will subcontract

able and comforting feeling to know we can call on each other.

Part of this mutual support also involves mutual trust. We respect each other's "territory" as much as possible. It is said that possession is nine-tenths of the law, and many of us feel that our clients are just that—"ours." We don't want anyone else treading on "our" turf. But there might come a time when we are unable to meet our client's needs, and must direct work to one of our colleagues.

Colleague, not competition. Because despite our proprietary interest in the client base, we are still a community of professionals, and being a professional means doing what's best for our clients. It also means not "stealing" someone else's clients. Some of us had dealt with the same client for several years, and, yes, felt a little possessive of that client. Although we shared the

(See *Cooperation*, page 4)

Cooperation
(from page 3)

**"We collaborate
on large jobs
and cooperate
on smaller ones."**

same interest in getting that next contract, we also felt that we didn't want anyone else taking work away from us. We therefore came to an informal agreement among ourselves that we would not actively solicit work from each other's clients. But how would we know? How could we protect our clients when no-one else knew who they were?

This led to an obvious, but, quite frankly, scary step. We each made a list of the clients that we considered "our own." Then we shared this list with each other.

By revealing our client lists, we had not only ensured that no one else would inadvertently take work away from us, but we had also strengthened the bond of trust that we had developed in the group.

No monopoly

You might ask how this could benefit our clients. After all, haven't we essentially established a monopoly as far as our own clients are concerned? Not at all. Most clients, when looking for a contractor, will usually call the person they are most familiar with.

Suppose a client calls contractor A. If A is too busy at the time, then one of two options can be followed: refer the client to a colleague (contractor X), or take the job

and subcontract to X. In either case, the client benefits by getting the job done, and A keeps the good will of the client by being helpful. The client has (we hope) been impressed by the generous attitude of A.

A matter of trust

The other side of the scenario puts A's trust to the test. What if the client calls X next time instead of A? Our informal agreement merely prevented X from actively soliciting work from A's client. But in this case, it is the client who has made the first move. A has to rely on X's professional integrity to insist that A be approached first. This can be a very hard decision at times. After all, this might be X's only job in several months. Also, the client might have expressed dissatisfaction with A. Still, we like to think that we will do the "right" thing. After all, we are *Professionals* with all that word implies.

Looking back over this last year, I think we have earned that title. We collaborate on large jobs and cooperate on smaller ones. We have established an atmosphere of friendly competition. I have no qualms now about going to a meeting and asking for help with a problem, or of referring a client to

someone else if I cannot fit another job into my schedule. I know that referral will be reciprocated some time in the future, from someone in the group. My job is made so much easier now, knowing I have a support network I can call on when I run into difficulties. And it's even more satisfying when I can share a particularly successful strategy with others who might be in a similar situation. I feel that my fellow C&IC PIC members are more than just colleagues, but friends. Joining this organization was one of the best moves I ever made.

Susan Haire is president of STC's Manitoba Chapter. She has been in business as a technical writer (Softwrite Documenting) since 1987, specializing in software user manuals. She also teaches WordPerfect. IP

Moving?



If you have a new address or phone number, please let us know right away. Send complete information to:
C&IC PIC
P.O. Box 1725
Ann Arbor, MI 48106

The initial listing of book and written-resource favorites in the last issue

More favorite references

Additions to the list of best books for independent professionals

by Susan Witter

of IP generated more response which, I hope, will continue. If it does we may publish a true anthology someday.

Bly, Robert S., *Selling Your Services*. New York: Henry Holt and Company, 1991—Contains great practical information for those of us who contract independently, whether or not for writ-

ing services.

Young, D. R., publisher, "Job Skills Booklets for Individuals and Small Businesses." Communication Services, 210 Glen Ellyn Way, Rochester, NY 14618-1617—Lists 22 small, meaty booklets on a variety of topics of interest to home-based and other small businesses: networking, billing, writing proposals and contracts, designing documents, organizing practically anything, etc. Includes many booklets written by STC members.

Mastin, Robert, publisher, "The Entrepreneur's Business Success Resource Guide." Aegis Publishing Group, 796 Aquidneck Avenue, Newport, RI 02840—Selections of three or four of the best in categories like: information resources, general business help, writing and self publishing, money-making ideas. Choices are excellent and serve as textbooks in some local colleges.

Thanks to David Young and Carl Burkhardt. **IP**

PICture (from page 2)

dollar. PICs have been around STC for some time now, but in the last several years they've been more active, more productive, and more involved in meeting their members' professional needs. Whether it's publishing this newsletter you're reading, conducting seminars or workshops at conferences, or publishing the results of a recent survey, STC's PICs are working harder than ever to learn what our members want and find new and innovative ways to provide those services.

Now, we all know about networking as a way to get ahead. Meet and greet, see and be seen, press the flesh, or whatever you like, it's all about knowing who to call to get the help you need. STC chapters provide an excellent way to do this every month, at chapter meet-

ings and through their own newsletters. PICs provide the same resource, but at the national, even international level rather than at the local level. As the business climate continues to change, the ability to call an associate in your field across the country for help on a project or finding a new job becomes ever more important, indeed, it becomes vital to our survival.

As Assistant to the President for PICs, I have the unique pleasure and challenge of helping make STC's PICs the very best they can be. I have some very specific ideas on how to accomplish that. I also have some of the best PIC managers I could possibly hope for, as well as an advisory committee whose counsel I value greatly, but I need more than those assets. I need suggestions from you.

As a PIC member, you know what you need from your PIC. I encourage you to contact your PIC manager to share your thoughts with him or her. Contact me, too, and let me know what you believe your group should be doing and how I can help advance our profession. You can reach me at:

Communication Professionals
81098 Fair Oaks Drive
Whitmore Lake, MI 48189
313-449-0310.

I'm looking forward to a banner year for STC's professional interest committees and to hearing from you soon. *An STC Associate Fellow, Christopher Juliet is a member of the South-eastern Michigan Chapter, founding manager of the Contracting and Independent Consulting PIC, and current Assistant to the President for PICs.* **IP**

Contract
(from page 1)

**"it's not simply a
matter of the
clients'
expectations
being different
from the writers'"**

one revision, so it's not simply a matter of the clients' expectations being different from the writers'. My best guess (and it's only a guess—obviously, the clients don't confide in me) is that the clients reach the limits of their patience with the writers or with the documentation process, and, instead of terminating the contracts in a businesslike way, they try to, well, weasel out of them. The clients may not know a proper way to terminate contracts, or they may not have the interpersonal skills or confidence to continue discussing their problems with the writers. Often they act as though they're mad about something. In any case, whatever the cause, they deny their lawful obligations to pay the writers.

Important points

A contract should provide for termination without penalties in the event that either party cannot perform. It should specify that you will be paid for all work done, that you won't work if you don't get paid, that you will produce a manual to industry standards (in the absence of more specific standards), and that the client's reviewers have to share responsibility with you for the documentation's accuracy and acceptability. I also recommend that milestones for the return of review copies be

made part of the project schedule instead of being improvised later on. If there's a problem later, you can point to the returned copies, or lack of them, or their lateness, to buttress your case.

And include management on the distribution list for the review copies, so they, as well as key staff, are apprised of and responsible for reviews.

Keep copies

Of course, don't throw away review copies until the project is wrapped up. One grievance dragged on for weeks until the writer remembered that he'd stashed the review copies in his garage. After sorting them out, he was able to demonstrate that the client's rejection of his third draft was wholly unreasonable.

Copyright law can be a contract writer's best friend. We tend to ignore copyright, because we nearly always expect the client to retain the copyright, but citing the law can push clients into resolving thorny disputes.

Copyright law is federal law, so any violation of it is a federal offense. Also, the law provides for statutory damages, which means that, in case of infringement, you do not have to prove actual damages, as you do in most situations. You only have to prove the infringement. In a car accident, for example, you

have to prove that the accident actually prevented you from working. If accident law provided statutory damages, you'd only have to prove that the accident occurred.

Both of these features of copyright law make clients nervous. When you use them to season the copyright whopper, they cause heartburn. The whopper is that you own all rights to your documentation until you've been paid. Copyright law stipulates that all rights to a work remain with you, the work's creator, until you transfer them. For the transfer to be complete, all the conditions of your contract must be satisfied. If there's a dispute over the contract, the rights don't transfer and the client can't use your manual.

A federal offense

Any use of your manual without payment constitutes infringement, which is a federal offense that provides for statutory damages.

Can't you just see a lawyer's eyes narrow when s/he reads this in your demand letter?

So what should you put in your contract? Stating that the manual is a work made for hire indicates that you intend to transfer all rights to the client, but you should still say that the contract must be satisfied and all invoices paid before the copyright

**"sue the ...
misguided soul"**

will be transferred. This forewarns the client and simplifies your citing the law in the event of a dispute.

Here in California, clients avoid the phrase, "work made for hire" and its variants, because using it makes them liable for state employment taxes. California writers can substitute a paragraph saying they intend to transfer all rights when the contract is satisfactorily concluded.

State your rights

If you are going to keep any rights, state the ones that you are transferring, not the ones that you are keeping. I recently handled a grievance involving a retainer clause. I had never seen one in a writer's contract, and I didn't know if it was enforceable. But it was upheld in Small Claims Court after the judge researched its validity, so I've started using one in my own contracts.

A retainer protects you when a client is forced to delay a project temporarily. It's basically a payment schedule for the time that you're unable to work. For instance, you can specify no payment for the first two days of delay and 4 hours' payment for every subsequent day. Think about the payment schedule carefully. How much money will tide you over? How much will keep you from looking for work elsewhere? And

do you want to increase the payments over time, to pressure the client into resuming the project or canceling it altogether?

You can also specify a termination payment, say 40 hours, that applies if the client does cancel. This is not a penalty. It's a clean way of ending a contract prematurely when no one is at fault. Contrary to most people's assumption, employment law holds that employees can be fired at will but contractors can be let go only according to the terms of their contracts. If your contract specifies a termination payment, the client is obliged to honor it.

Stake a claim

Small Claims Court can be a good place to resolve disputes. It's tedious because you have to fill out forms and pay fees every time you turn around. But the judges rule on the law. Period. Rarely do they err.

In California, as is generally true elsewhere, the state mandates an absolute limit on the value of Small Claims cases (it's \$5000 here). Each jurisdiction, in turn, can set its own limit within that mandate. The jurisdictions can determine their own procedures, too, so you need to consult with each court before filing. Many courts have advisors who preview your case and explain how to

proceed with it. Nolo Press, based here in Berkeley, publishes two excellent books on Small Claims Court, as well.

Collecting when you win isn't as hard as you've heard, and you can file against any firm that has a business presence in your state. One of our members recently filed here in California against a newsweekly in New York and won. And collected.

Don't wait

So, in conclusion, if you're going to get a client mad at you, do it while the client owes you less than \$5000. Then sue the ... misguided soul.

Okay, I'll be serious. It's poor business practice to let a client run up a bill that's greater than you can conveniently recover in case of problems, especially for businesses like ours, where cash flow depends on only one or two clients at a time. The great majority of writer-client relationships are happy ones, but once in a while, things go sour. Good contract language and quick action provide effective recourse in the rare event that you need it.

Michael Bradley is principal of Tech Pubs in Oakland, California, a member of Berkeley STC, and Co-Regional Grievance Officer, National Writers Union. IP

A Plan for the Improvement of English Spelling

by Mark Twain

For example, in Year 1 that useless letter "c" would be dropped to be replas'd by either "k" or "s", and likewise "x" would no longer be part of the alphabet. The only kase in which "c" would be retained would be the "ch" formation, which will be dealt with later.

Year 2 might reform "w" spelling, so that "which" and "one" would take the same konsonant, wile Year 3

might well abolish "y" replasing it with "i" and lear 4 might fiks the "g/j" anomali wonse and for all.

Then, the improve-ment would kontinue iear bai iear with Iear 5 doing awai with useless double konsonants, and Iears 6-12 or so modi-faiing vowlz and the rimeining voist and unvoist konsonants.

By Iear 15 or sou, it wud fainali bi posibl tu

meik ius ov thi ridandant leterz "c", "y" and "x"—bai now jast a memori in the maindz ov ould doderez—tu replais "ch", "sh", and "th", rispektivli.

Fainali, xen, aafte sam 20 Iers ov orxogrefkl riform, wi wud hev a lojkl, kohirnt speling in ius xrewawt xe Inglii-spiking werld.

This piece was caught circulating the electronic airwaves.—Ed. **IP**