

SIMON & SCHUSTER, INC., PUBLISHERS  
630 FIFTH AVENUE, NEW YORK, NEW YORK 10020

## Publishing Agreement

SIMON & SCHUSTER, INC.

(hereinafter called the "Publisher")

and

Eric Berne, City National Bank, as Trustee under the 1967 Berne Children's Trust  
for Peter Berne, and City National Bank, as Trustee under the 1967 Berne Children's  
Trust for Ellen Berne Finkle  
c/o Martin Gang, Esq.  
GANG, TYRE & BROWN  
6400 Sunset Building  
Hollywood, California 90028

(hereinafter called the "Author")

agree:

FIRST: The Author

- A. shall deliver to the Publisher two copies of the literary work now entitled  
**SEX IN HUMAN LOVING (tentative)**

(hereinafter called the "Literary Work") in final form on or before **April 15, 1970**  
**and will contain approximately 80,000 words** 1 copy

- B. makes the warranties and representations set forth in Part Two (36-45) of the  
Basic Agreement, except as otherwise specifically stated in *THIRD* (C) of this Publish-  
ing Agreement;

- C. grants and assigns to the Publisher.

- (i) the trade edition rights;
- (ii) all other primary rights; and
- (iii) the shares, provided in *THIRD* (A) of this Publishing Agreement, of the  
proceeds received on disposition of the secondary rights; and

~~D. agrees that the Publisher shall have the first opportunity to consider the Author's  
next full-length work for publication on mutually satisfactory terms. If within 60 days  
following submission of the final manuscript to the Publisher, Publisher and Author are  
unable in good faith to agree upon terms for publication, the Author shall be free to  
submit the manuscript to other publishers, provided, however, that the Publisher shall  
retain the first option of publishing the work on terms no less favorable to the Author  
than those offered by any other publisher.~~

SECOND: The Publisher

- A. shall publish in book form the Author's work on or before **Fall**  
19 **70**, for sale at a catalog retail price of not less than **\$4.95** in  
the trade editions;

B. shall copyright the literary work in the United States in the name of the Author;

C. shall pay the Author **\$78,500.00, payable as follows:**  
**\$37,500.00 on signing of this agreement, \$18,500.00 on publication of the trade edition and \$22,500.00 on publication of the mass market paperback reprint edition, such sums to be an advance against**

(i) royalties at the following rates, for sales of the trade edition:

**15% of the catalog retail price on all copies sold, less returns;**

(ii) 50% of the net proceeds received on disposition of the other primary rights, except as otherwise provided herein;

(iii) in accordance with the special provisions in Part Five of the Basic Agreement, for sales by mail order, at special discount, as unbound sheets for export from reduced printings, to book clubs, or as excess stock, or for any mass market paperback reprint, quality paperback or textbook editions of the literary work published by the Publisher itself under one of its own imprints or for publication of part of the literary work by the Publisher in another work;

~~(iv) notwithstanding anything to the contrary in this or any prior agreement between the parties, the Author shall in no event be entitled to receive hereunder more than \$ \_\_\_\_\_ during any one calendar year. If in any one calendar year the total amount accruing to the Author under this or any other agreements with the Publisher shall exceed such amount, he shall be entitled to receive the excess amount, up to the maximum stated herein, in any succeeding calendar year in which the sums accruing to him under this or any other agreements with the Publisher do not exceed said maximum.~~

THIRD: The Publisher and the Author

**See Rider Para. 1**

~~A. agree to share the net proceeds received on disposition of the following secondary rights as follows:~~

Dramatic Rights	% to Author	% to Publisher
Motion Picture Rights	% to Author	% to Publisher
Educational Picture Rights	% to Author	% to Publisher
Radio Rights	% to Author	% to Publisher
Television Rights	% to Author	% to Publisher
+ First Periodical Rights	% to Author	% to Publisher
Commercial Rights	% to Author	% to Publisher
<del>Foreign Language Rights</del>	<del>% to Author</del>	<del>% to Publisher</del>

B. agree to be bound by all of the terms and conditions of the Basic Agreement which follows and which is made a part of this Publishing Agreement; and

C. agree to the following special provisions, which shall prevail over any conflicting provisions in the Basic Agreement:

**SEE RIDER**

**Author:**

**Eric Berne**

\_\_\_\_\_  
**City National Bank, as Trustee under the 1967  
Berne Children's Trust for Peter Berne**

By \_\_\_\_\_

**City National Bank, as Trustee under the 1967  
Berne Children's Trust for Ellen Berne Finkle**

By \_\_\_\_\_

SIMON & SCHUSTER, INC., PUBLISHERS

By .....  
AUTHORIZED SIGNATURE

Dated **April 2,** ..... 19 **70** ..... (L.S.)  
~~AUTHOR~~

Rider to Publishing Agreement  
between SIMON & SCHUSTER, INC.,  
Publishers, and DR. ERIC BERNE, et al,  
Author, for publication of  
SEX IN HUMAN LOVING (tentative)

1. Author hereby designates Publisher as his exclusive agent throughout the World for Foreign Rights (which shall be deemed to include licensing of the English language edition as well). Publisher shall receive as its compensation 20% of net proceeds of any disposition of such rights. In determining net proceeds Publisher shall make no deduction for any commission paid to a foreign or other sub-agent.

2. Paragraph 89 is changed to read as follows:

(a) If any such suit, claim or demand is brought or made, the Publisher may elect (i) to undertake the defense thereof, or (ii) at any time thereafter to notify the Author that it intends to satisfy or compromise same, and in such notification inform the Author in writing of what the Publisher claims to be the Author's obligations to it by reason of such claim and the proposed satisfaction or compromise.

(b) If the Author consents to such satisfaction or compromise and accepts Publisher's statement of the Author's obligations in respect thereto, or within 30 days after transmittal of such notification by Publisher fails to deliver to Publisher the Author's written objection thereto, Publisher may complete such satisfaction or compromise and the Author's obligation for indemnity in respect thereof shall be as set forth in the Publisher's said notification to the Author.

(c) Should the Author give written notice to the Publisher within such time that he disapproves the disposition so proposed by Publisher, and agrees in writing to post bond in an amount sufficient to indemnify Publisher against all potential liability by reason of such suit, claim or demand (but in no event shall Author be required to post a bond exceeding the principal sum of \$37,500.00), Publisher may then either (i) satisfy or compromise the said suit, claim or demand entirely at its own expense (except a claim of plagiarism which reflects on the Author's integrity), or (ii) require the Author promptly to post such bond and to undertake the defense, in which case the Author shall within 5 days of demand post such bond with Publisher and at his sole cost and expense defend or continue to defend such claim and dispute, subject to Publisher's right to require an increase in the amount of such bond should circumstances warrant. If the Author fails to post such bond within said time, Publisher may proceed as if Author had expressly consented to the disposition proposed (as above provided) by the Publisher. If the Author posts such bond, and if the claim, suit or demand shall be thereafter finally adjudicated against the Author, or settled by the Author, the latter shall pay all costs and expenses incident thereto and Publisher is directed and authorized to apply such bond held by it in satisfaction of its liability resulting from such disposition, the Author to remain liable to the Publisher for any amount by which the costs and expenses incurred by Publisher by reason of such claim, suit or demand exceeds the deposited security. If such claim, suit or demand is finally determined in favor of the Author, all costs and expenses of defense shall be shared by Publisher and Author equally.

(d) If the Author approves the disposition proposed by the Publisher but makes timely written objection (i.e., within 30 days) to the Publisher's claim concerning the Author's obligations in respect thereto, Publisher may complete such disposition and shall retain the right to indemnification by the Author in accordance with the provisions of this agreement.

(e) Except as herein above otherwise provided, the costs and expenses of defense of any suit, claim or demand arising out of publication, sale, distribution or disposition of rights in respect to the literary work shall be borne by the Author, except where such suit, claim or demand arises solely out of an act of the Publisher, in which case all costs and expenses of defense shall be borne entirely by Publisher.

3. With respect to mass market paperback editions and quality paperback editions, Paragraph 70 is changed to provide as follows:

(a) In the event Publisher shall elect to exercise mass market paperback reprint rights, Publisher shall pay to Author royalties on the sale of editions thereof at the following rates, based upon the catalog retail price, less returns:

\* (i) 10% on all copies sold within the Continental United States, exclusive of the sales specified in subparagraph (ii) below, and

(ii) 4% on mail order sales, remainder sales as described in Paragraph 71 of the Basic Agreement, sales outside the Continental United States, sales in bulk to book clubs and sales at special discounts, except that in no event shall such royalties exceed the excess, if any, of net proceeds received in respect to such sales less the Publisher's manufacturing costs.

(b) In the event Publisher shall elect to exercise quality paperback reprint rights, Publisher shall pay to Author royalties on the sale of editions thereof at the following rates, based upon the catalog retail price, less returns:

(i) 6% on the first 10,000 copies sold within the Continental United States, exclusive of sales specified in subparagraph (iii) below, and

(ii) 7½% on all copies over 10,000 sold within the Continental United States, exclusive of the sales specified in subparagraph (iii) below, and

X (iii) 4% on mail order sales, remainder sales as described in Paragraph 71 of the Basic Agreement, sales outside the Continental United States, sales in bulk to book clubs and sales at special discounts, except that in no event shall such royalties exceed the excess, if any, of net proceeds received in respect to such sales less the Publisher's manufacturing costs.

4. Paragraphs 11, 13, 14 through 20, 22, 24, 25, 47, 52, 77, 86, 89 and 90 are hereby deleted.

5. "Costs and expenses," as that phrase is used in Paragraph 27, shall be limited to plate manufacturing costs.

6. Paragraph 41 is amended to add at the end thereof the following: "Opinions or theories expressed or advanced by the Author are excluded from the scope of this warranty."

7. Paragraph 42 is amended in its entirety to read as follows: "The literary work contains no obscene matter and is not obscene. If the literary work contains any reference to any drugs, drug compounds, pharmaceutical or therapeutic products or appliances, the Author warrants:

(a) that he has no financial interest, direct or indirect, of any kind or nature in such substance or in any company investigating, manufacturing, selling, distributing, testing or promoting same; and

(b) the reference thereto in said work conforms with all applicable federal and state laws and regulations."

8. Paragraph 43 is amended to add the following at the end thereof: "If, prior to the publication of the work, there should come to the attention of the Publisher, whether as the result of an independent investigation or otherwise, any question of the truth of any of the foregoing warranties and representations, and the Publisher shall fail to inform the Author thereof and to afford the Author the opportunity to make such changes as would eliminate such question, the Publisher shall be deemed to have waived any rights based on any claim of breach of warranty or representation by reason of the publication of such questionable material."

9. Paragraph 46 of the Basic Agreement is amended to read as follows: "Under the grant of primary rights, the Publisher and its grantees shall have the exclusive right of publication in the English language under its own name and under various trade names and imprints in the United States, its territories, possessions, protectorates, and places mandated to it, and the Philippines and Canada, and the non-exclusive right of publication in the English language elsewhere throughout the world except within the British Commonwealth."

10. Paragraph 49 is amended to add the following at the end thereof: "No disposition by the Author of secondary rights or publication of new matter in any scientific or professional journal shall be deemed a violation of Author's obligations under this paragraph."

11. Paragraph 50 is amended to further provide that Publisher shall obtain Author's consent prior to the exercise of quality paperback reprint rights, periodical selection rights and book club rights.

12. The last line of Paragraph 51 is amended to read as follows: "after any disposition of first periodical rights."

13. Paragraph 56 is changed to read as follows: "The Publisher may use the name and likeness of Eric Berne on the cover and jacket, and generally in connection with the advertising and promotion of the literary work, provided however that Publisher shall obtain Eric Berne's approval for all advertising or jacket copy which shall carry his name or likeness, such approval not to be unreasonably withheld."

14. Paragraph 60 is amended to provide as follows: "Publisher agrees to notify Author when and if it shall be appropriate to make application for renewal or extension of copyright in the work in the United States, provided however that Publisher shall not be held responsible to Author, his spouse, children, executor, next of kin or to any other party in the event Publisher shall fail to give such notice. Author hereby authorizes Publisher to renew said copyright on Author's behalf."

15. The first line of Paragraph 62 is amended to read as follows: "Publisher will make application for copyright in Canada and will take such other steps as it deems appropriate to copyright the ...."

16. Paragraph 76 is amended to read as follows: The Author may, upon written request, examine all books of account of the Publisher in so far as they relate to the literary work, provided however, that Publisher shall be under no obligation to retain any such books beyond a period of time dictated by normal accounting practices.

17. The phrase "or any other factor beyond his control" as it appears in Paragraph 79, shall be deemed to include, by way of illustration, examples set forth in Paragraph 85.

18. ~~The phrases in Paragraph 81 reading "21 days" and "21-day" are hereby amended to read "45 days" and "45-day" respectively.~~

19. The following is added to the end of the first sentence of Paragraph 83: ", provided however that in the event Publisher shall determine in its opinion that the work contains such material, Publisher agrees to notify Author of all changes it deems necessary and to afford a reasonable opportunity to Author to make such changes. In the event Author shall not, in Publisher's sole and absolute judgment, comply with Publisher's request, Publisher shall have the right to demand payment of all sums advanced hereunder to Author, and upon such repayment this agreement shall terminate."

20. The following phrase is added to the end of Paragraph 84: "and Author shall be entitled to retain all advances as shall have been paid hereunder."

21. Paragraph 87 is amended to insert the phrase "based upon any of the Author's warranties under Part Two of this Agreement," immediately following the phrase "or the settlement thereof."

22. The phrase "the Author may by a notice in writing" as used in Paragraphs 92 and 93 shall not be construed to mean that separate notices are necessary for each election made by the Author under those paragraphs.

23. Author agrees that no book authored by him other than the Work and other than books heretofore published shall be published or be permitted to be published prior to March 1, 1971.