



TRADE  
DEPARTMENT

# Agreement

Letter to  
Pat 5.5

made this 30th day of June 1977  
CHARLES SCRIBNER'S SONS of New York, N.Y.  
(hereinafter called the "Publisher")

and  
The Children's Museum  
The Jamaica Way  
Boston, Mass. 02130

(hereinafter called the "Author") being the proprietor of a work provisionally entitled  
WHAT IF I COULDN'T... by Janet Kamien

(hereinafter called the "Work")  
Said Publisher and Author in consideration of the promises hereinafter set forth, do hereby mutually agree as follows:

Author's  
Grant

## 1

The Author hereby grants to the Publisher, its successors and assigns, during the full term of copyright and all renewals and extensions thereof:

(a) Full, sole and exclusive license to publish and sell the Work in book form in the English language in the United States of America, the Philippine Islands and Canada, and to sell the same non-exclusively for export to all other countries except the British Commonwealth (other than Canada), the British Trusteeships, the Republic of South Africa, Rhodesia, the Irish Republic, Burma, Pakistan, Iraq and Jordan.

(b) Full, sole and exclusive right to license the Work in the English language for publication throughout the British Commonwealth (other than Canada), the British Trusteeships, the Republic of South Africa, Rhodesia, the Irish Republic, Burma, Pakistan, Iraq and Jordan.

(c) Full, sole and exclusive right to license the Work in the English language, within the territory set forth in this paragraph for publication by book clubs and for publication of a cheap or reprint edition by another publisher.

~~(d) Full, sole and exclusive right to license, within the territory set forth in this paragraph and before book publication, the publication in newspapers and magazines, selections, digests, abridgements, condensations, serializations and syndications of the Work in the English language.~~

(e) Full, sole and exclusive right to license, within the territory set forth in this paragraph and after book publication, the publication in newspapers, magazines and books, selections, digests, abridgements, condensations, serializations, syndications and microfilm and picture book versions of the Work in the English language, provided such rights are not retained by the purchaser of the first serial rights.

~~(f) Full, sole and exclusive right to produce, publish and exhibit the Work in the English language, within the territory set forth in this paragraph in all audio-visual forms including, but not limited to filmstrips, iconographic motion picture adaptations, sound recordings on phonograph records, tapes or other means of audio and/or video reproduction, including mechanical and electronic, by any technology now known or hereafter invented.~~

~~(g) Full, sole and exclusive right to license the Work in the English language, within the territory set forth in this paragraph, for production, publication and exhibition in all audio-visual forms including, but not limited to filmstrips, iconographic motion picture adaptations, sound recordings on phonograph records, tapes or other means of audio and/or video reproduction, including mechanical and electronic, by any technology now known or hereafter invented.~~

(h) Full, sole and exclusive right to publish and license the Work for publication in all other languages throughout the world, including but not limited to, publication in newspapers and magazines, selections, digests, abridgements, condensations and syndications of the Work, before and after book publication.

(i) The right to license the Work, without fee and with no royalty to the Author, for the following uses: publication in Braille, photographing, recording and microfilming for the physically handicapped.

(j) All rights in the Work now existing, or which may hereafter come into existence, not specifically herein granted, are reserved to the Author.

~~(k) Full, sole and exclusive right to sell and license motion picture, dramatic, radio and television versions and performances of the Work in all languages throughout the world.~~

## 2

Delivery  
of the  
Manuscript

The Author agrees to deliver to the Publisher on or before the 1st day of February 1978 the complete manuscript together with one carbon of the Work in its final revised form, in the English language, in content and form satisfactory to the Publisher. If the Author shall fail to deliver such manuscript within three (3) months of said date, the Publisher may terminate this agreement by written notice to the Author and thereupon the Author shall repay to the Publisher all advances made by the Publisher pursuant to this agreement. The Author agrees to furnish promptly, at his own expense, all photographs, drawings, maps, charts or indexes necessary to the completion of the Work. If he fails to do so, the Publisher shall have the right to supply them and charge the cost against any sums accruing to the Author. If copyrighted material is included in the Work, the Author, at his own expense, shall secure from the copyright owners written permission to reprint said material in the Work. The Author agrees that alterations in the proof made at his request or with his consent and which are in excess of ten percent (10%) of the cost of composition, exclusive of the cost of correcting printer's errors, shall be charged against any sums accruing to the Author.

The Publisher shall copyright the Work in the United States in accordance with the requirements of the Universal Copyright Convention, in the name of the Author, or in the name of the Publisher if the Author so elects, and in the latter event shall assign the copyright to the Author at his request. If the Publisher shall supply material for the Work such as illustrations, it may copyright such material in its own name or in the name of the originator. In the event copyright of such material or of the entire Work including such material is effected in the Author's name, the Author agrees, upon request, to assign the copyright of such material. The Author agrees to notify the Publisher promptly of any arrangement which he may have entered into or may enter into for the publication of the Work, in whole or in part, prior to the publication contemplated by this agreement in order that the Publisher may fully comply with the United States Copyright Law; and in the event that any copyright shall have been effected with respect to any part of the Work prior to publication pursuant to this agreement, in the name of any person other than the Author, the Author agrees to deliver to the Publisher legally recordable assignment of such copyright before the Work is printed. The Author further agrees to notify the Publisher of any title under which the Work may have appeared as a serial or in any other form prior to the publication thereof pursuant to this agreement. In the event that at the time of execution hereof the Work shall not yet have appeared as a serial, the Author agrees not to permit such publication under a title other than the above-mentioned provisional title without the written consent of the Publisher. The Publisher shall have the right but not the obligation to obtain renewal of copyright.

#### Author's Warranty

## 4

The Author warrants that he is the sole Author of the Work; that he is the sole owner of all the rights granted to the Publisher hereunder; that he has not previously assigned, pledged or otherwise encumbered the same; that he has full power to enter into this agreement; that the Work is original, has not been published heretofore, and is not in the public domain; that it does not violate the right of privacy of any person; that it does not contain libelous, obscene or other unlawful matter, and that it does not infringe upon any statutory or common law copyright or any other right of any person or party; and that any recipe, formula, or instruction contained in the Work is not injurious to the user.

The Author agrees to hold harmless the Publisher, and all sellers of the Work and licensees of a subsidiary right therein against any loss, expense or damage occasioned by any claim, demand, suit or recovery, finally sustained, arising out of the breach or alleged breach of any of the foregoing warranties. The term "expense" as herein used shall include reasonable fees of counsel selected by the Publisher. The Publisher shall, with reasonable promptness, apprise the Author of any such claim, demand or suit, the Author shall fully cooperate in the defense thereof, and the Publisher may accordingly withhold payments due to the Author under this or any other agreement between the parties. The foregoing warranties and indemnities shall survive the termination of this agreement.

#### Suit for Copyright Infringement

## 5

In the event that the copyright of the Work shall be infringed, and if no arrangement mutually satisfactory shall be arrived at for joint action in regard thereto, either one of the parties shall have the right to bring action to enjoin such infringement and for damages. If they shall proceed jointly, the expenses and recoveries, if any, shall be shared equally; and if they shall not agree to proceed jointly, the party going forward with such action shall bear all the expenses thereof and any recoveries had therein shall belong to such party; and if such party shall not hold the record title of the copyright, the other party hereby consents that such action be brought in his or its name.

#### Style and Manner of Publication

## 6

The Publisher agrees to publish the Work within eighteen (18) months from the receipt of the manuscript, provided it complies with all of the requirements of paragraph "2," at its own expense in such style and manner and at such price as it shall deem suitable. The Publisher shall keep the Work in print so long as it shall deem expedient, subject, however, to the provisions of paragraph "11."

#### Royalties

## 7

The Publisher agrees to pay the Author the following:

(a) Except in the cases hereinafter provided, a royalty of ten per cent (10%) of the retail list price of every copy sold of the Work.

All returns shall be deducted from sales totals and an allowance for returns shall be made at the discretion of the Publisher.

~~If the sale of the Work falls below a total of~~  
~~copies in any accounting period as provided in paragraph "9," the royalty shall be~~  
~~on all copies sold during that accounting period.~~



(b) On all copies sold outside the United States, the royalty shall be five per cent (5%) of the retail list price.

(c) On all copies sold by the Publisher direct to the consumer through coupon advertising, direct-by-mail circularization or through house-to-house subscription sales, the royalty shall be five per cent (5%) of the retail list price.

(d) All sales at a special wholesale discount of fifty per cent (50%) or more of the retail list price through special channels outside of the ordinary wholesale and retail channels shall be accounted for separately and not included in sales totals and on all such sales a royalty of ten per cent (10%) shall be paid on the amount received by the Publisher.

(e) All sales of any hard-cover reprint edition issued by the Publisher at a retail list price of less than two thirds (2/3rds) of the retail list price of the Publisher's regular trade edition shall be accounted for separately and not included in sales totals and the royalty on the copies sold of such an edition shall be ten per cent (10% of the amount received by the Publisher.

(f) All sales of any paperbound reprint edition issued by the Publisher shall be accounted for separately and not included in sales totals and the royalty on the copies sold of such an edition shall ten per cent (10%) of the amount received by the Publisher.

(g) On unbound sheets sold to a publisher outside of the United States, the royalty shall be fifteen per cent (15%) of the amount received by the Publisher.

~~(h) On the licensing of the Work for use before book publication in any of the ways specified in paragraph "I" subdivision "(d)," ninety per cent (90%) of the net proceeds from such a license.~~

(i) On the net proceeds from the license of any of the rights specified in paragraph "I" subdivisions "(c)," "(e)" and "(g)" for use after book publication, fifty per cent (50%) thereof.

~~(j) On all copies sold or rented by the Publisher of any of the audio-visual forms specified in paragraph "I" subdivision "(f)," ten per cent (10%) of the amount received by the Publisher therefrom; such sales shall be accounted for separately.~~

(k) On the licensing of the Work for publication in the English language in the British Commonwealth (other than Canada), the British Trusteehips, the Republic of South Africa, Rhodesia, the Irish Republic, Burma, Pakistan, Iraq and Jordan, or upon the licensing of the Work for publication in a foreign language, the Author shall receive eighty-five per cent (85%) of the net proceeds of such license.

~~(l) On the sale or license of the motion picture, dramatic, radio and television rights to the Work, the Author shall receive eighty-five per cent (85%) of the net proceeds of such sale or license.~~

(m) The Publisher may publish or permit others to publish such selections from the Work for publicity purposes as it may deem appropriate to benefit its sale, without compensation to the Author.

(n) A royalty of ten per cent (10%) of the amount of the Publisher's receipts for all copies of overstock which the Publisher deems it expedient to sell at "remainder" prices, i.e., at a special discount of sixty per cent (60%) or more from the retail list price, except when these are sold at or below cost, in which case no royalty shall be paid.

(o) The Publisher agrees to pay to the Author as an advance against and on account of all monies accruing to him under this agreement the sum of four thousand dollars (\$4000) payable as follows: one thousand five hundred dollars (\$1500) payable upon execution of this agreement; one thousand five hundred dollars (\$1500) payable on acceptance of the completed manuscript; one thousand dollars (\$1000) payable on acceptance of the completed artwork. Any such advance to the extent unearned shall not be repayable provided the Author is not in default under this agreement

## 8

The Publisher shall give to the Author on publication ten (10) free copies of the Work and the Author shall have the right to purchase further copies for personal use at sixty per cent (60%) of the retail list price.

Author's  
Copies

## 9

The Publisher agrees to render semi-annual statements of account to the first day of February and the first day of August and to forward such statements to the Author together with remittances in accordance therewith within four (4) months after the date of statement.

Statement and  
Payment of  
Royalties

~~Notwithstanding anything to the contrary in this agreement, the Publisher shall in no event pay to the Author out of the sums accruing to him under this or any other agreement between the parties, more than \$ during any one calendar year. In the event the sums to the Author's credit exceed such annual maximum payment, such excess shall be held by the Publisher and shall be paid by it to the Author in successive calendar years provided each yearly payment shall not exceed the maximum herein stated.~~

## 10

If the Publisher shall determine that there is not sufficient sale for the Work to enable it to continue its publication and sale profitably, the Publisher may dispose of all or part of the copies remaining on hand as it deems best, subject to the payment of royalty in accordance with the provisions of paragraph "7" subdivision "(n)." In no event, however, shall the Publisher make such sale prior to the expiration of eighteen (18) months from date of publication of the Work.

Remainder  
Sales