

THE
JUMPSTART
YOUR
PUBLISHING
DREAMS
SEMINAR



W. TERRY WHALIN

The Jumpstart Your Publishing Dreams Seminar

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The Jumpstart Your Publishing Dreams Seminar

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The Seminar Schedule

1 p.m. to 2 p.m. Session 1

Understand today's market conditions
Current Book Statistic
Walk in the Editor's Shoes (for a few minutes)

2 p.m. to 3 p.m. Session 2

A Dozen Ways to Jumpstart Your Publishing Dreams
The Catch 22 of Publishing and How to Beat It
8 Characteristics of Successful Writers

3 p.m. to 4:15 p.m. Break for check-in and first-timers orientation

4:15 p.m. to 5:15 p.m. Session 3

The Importance of *The Pitch*
Fiction vs. Nonfiction; Book Proposals with Excellence
Critical elements for a book proposal; Strategies for a Six-Figure Advance

5:15 p.m. to 5:45 p.m. Session 4

Get Published *Now*: Essentials for Independent Publishing

Extra Information in the handout

Understanding and Negotiating a Book Contract
The Inside Scoop on Literary Agents: What They Do and Don't Do.
Platform Building Ideas for Every Author
The Value of Diversity and Ghostwriting
How to be proactive in promotion but not high maintenance;
Look Ahead To Your Future: Are you a one book wonder?

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Session 1 Understand The Market

The Market Is Always Changing

Current Book Statistics –

Publishing a book has never been easier. Almost everyone has a keyboard and a computer with the ability to crank in words and produce a manuscript—whether **nonfiction** or **fiction**. Authors struggle to find a **literary agent** and a traditional publishing deal. They get tired of crafting an excellent product, the waiting, and the rejection letters. Instead they decide to self-publish because that direction looks easy.

For over 20 years, I've been reading about publishing, writing and working in this business as an editor and writer. I encourage you to read **this recent article** from **Jane Friedman**, former editor at Writer's Digest and publishing expert. I want to quote a brief section of Friedman's article:

“Back in 2012, there were many headlines about the tremendous growth in self-publishing output as demonstrated by the increase in ISBNs used by indie authors.

Since then, Bowker—the agency that issues ISBNs in the United States—has continued to release annual stats that still show growth in the sector, but these numbers always come with important caveats, including:

- Bowker's figures don't reflect all of the self-publishing activity out there. They can't count books that don't have ISBNs, and a considerable volume of self-pub titles are published and distributed without ISBNs.
- Bowker's counts are for ISBNs, not book titles. A single book title may use several ISBNs (e.g., one for the print edition, another for the ebook edition, and so on).

According to Bowker, ISBNs for self-published titles in 2015 reached 727,125, up from 599,721 in 2014, representing a 21% increase in one year. The increase since 2010 is 375%.

But I think more important is where the growth occurred. **Bowker's numbers** indicate more authors are using Amazon's CreateSpace, which is free to use; older, fee-based self-publishing services are falling out of favor. Here's a selected glimpse (again, remember these are ISBN counts coming out of each service per year):

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- CreateSpace titles in 2010: 35,693
- CreateSpace titles in 2015: 423,718 (+1,087%)
- Author Solutions titles in 2010: 41,304
- Author Solutions titles in 2015: 23,930 (-42%)

The only area of Author Solutions' business that saw an ISBN increase in 2015 is WestBow, the Christian self-publishing imprint marketed through Thomas Nelson. Note that Penguin Random House, which used to own Author Solutions, sold it off in January 2016, unloading what was probably seen as an albatross.”

Are these statistics a surprise to you?

The increase of over 1,000% percent on CreateSpace *was startling*. If you publish through CreateSpace, your book is only on Amazon and not available in other formats.

If you decide to self-publish, understand several facts: First, you are establishing a world-wide sales record of your publishing efforts. Traditional publishers and **literary agents** look at this information to decide if they are going to publish your next book or take you on as a client. Second, you are in complete control of your work which may feel easier but also you are responsible for all the details of the book creation (excellent cover design, well-written writing, distribution and sales).

Yes the creation of books has never been easier. Here's the reality that few people will tell you: **making the book is easy but getting people to purchase the book will take hard work and persistent effort**. If you have developed relationships with people in your target market and connect with them often. More specifically if you connect to your audience through an email list and speaking to them face to face, then yes you can sell your book.

No matter what I write, a number of you are going to take the leap into self-publishing. Here's several action steps if you go this route:

- 1. Work with an experienced editor** to create an excellent book.
- 2. Work with professional cover designers** and people to format and produce a book where every detail looks like something from one of the big five traditional publishers. This means including elements like endorsements and words on the spine of the book (including a publishing logo on the bottom of that spine).



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3. Keep working consistently to **grow your audience**. Get my free ebook, [Platform-Building Ideas for Every Author](#) and trying new avenues to market and sell your book.
4. **Continue to learn all you can about publishing**. Get a copy of my [Book Proposals That Sell](#) and study the publishing insights in this book.
5. **Never give up on your book**. As the author, you have the greatest interest and passion for your book. This statement is true no matter whether you are traditionally published or self-publish. Always be looking for new opportunities to write or speak about your book.

Walk in the Editor's Shoes

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Ranking America's Largest Publishers

The publisher of Harry Potter was the sixth-largest trade publisher last year based on unit sales through BookScan

By Jim Milliot |
Feb 24, 2017

Anyone even remotely interested in book publishing knows who the Big Five trade publishers are—if not necessarily in what order they rank. For the record, Penguin Random House sold the most units through NPD BookScan outlets last year, followed by HarperCollins. Simon & Schuster was in third place; last week, S&S reported that its worldwide revenue was \$767 million in 2016, down 1.8% from 2015. The Hachette Book Group was #4 in units sold in 2016, a total that includes units from the Perseus Books Group, which Hachette bought last March. Macmillan rounded out the top five.

What is more of a mystery is which is the sixth-largest trade house. The company that finished behind the Big Five in 2016, based on unit sales made at retailers that report to BookScan, was Scholastic.

The company had 33 titles hit PW's Children's Frontlist Fiction bestseller list last year, including the top-selling print book of 2016: J.K. Rowling's *Harry Potter and the Cursed Child*, which sold 4.4 million units. And, while a number of books on the list were Potter-related, a host of other books did well in the year, including new books in the company's Baby-Sitters Club Graphix line. In all, Scholastic's trade sales (which excludes book fairs and clubs) were \$318 million in the 12-month period ended Nov. 30, 2016.

In seventh place was Disney, another children's publisher that had a good run with bestsellers last year, particularly in the frontlist fiction category. It had 25 books reach the Children's Frontlist Fiction bestseller list, led by six *Star Wars* titles and six books by author Rick Riordan.

Houghton Mifflin Harcourt, which last week reported sales of \$165.6 million in its trade division in 2016, was #8 on the units-sold list. Workman was in ninth place. Among its titles that sold more than 100,000 print copies last year were *Atlas Obscura: An Explorer's Guide to the World's Hidden Wonders* (which sold about 172,000 copies through BookScan outlets) and *What to Expect When You're Expecting* (which sold more than 138,000 copies). Claiming the 10th spot on the list was Sourcebooks. The independent publisher's top bestseller through BookScan outlets last year was *The Cellar*, which sold about 102,000 print copies.

Publishers in the 11th through 20th places were a mix of independent presses (such as Norton, Kensington, Chronicle), divisions of larger companies (Sterling, owned by Barnes & Noble; Dover, owned by LSC Communications), children's publishers (Candlewick), and religion houses (B&H Publishing, Tyndale). John Wiley's #12 spot on the list reflects sales of its business books and other trade-oriented titles to general retailers, rather than its educational materials.

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Both Dover and Sterling continued to do well with adult coloring books in 2016, although sales in the category cooled compared to 2015. B&N said that because of strong adult coloring book demand, sales of Sterling titles to retailers other than B&N were almost 22% higher in fiscal 2016 than in fiscal 2015.

B&H occupied the 19th spot on the ranking due in part to strong sales of *Fervent*, which sold about 306,000 units last year, and *The Battle Plan for Prayer*, which sold approximately 157,000 copies.

Largest Trade Publishers By Units Sold, 2016*

Rank	Publisher
1	Penguin Random House
2	HarperCollins
3	Simon & Schuster
4	Hachette Book Group
5	Macmillan
6	Scholastic
7	Disney Publishing Worldwide
8	Houghton Mifflin Harcourt
9	Workman
10	Sourcebooks
11	Sterling
12	John Wiley and Sons
13	Abrams
14	Dover
15	Candlewick
16	W.W. Norton
17	Kensington
18	Chronicle
19	B&H Publishing

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Rank	Publisher
20	Tyndale House

*Based on purchases made through outlets tracked by NPD BookScan

A version of this article appeared in the 02/27/2017 issue of Publishers Weekly under the headline: The Answer is... Scholastic

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Session 2 A Dozen Ways to Jumpstart Your Publishing Dreams

1. Why Have Goals? What Is Your Goal? Is Your Goal Realistic?
2. The Catch-22 of Publishing (and how to get around it)
3. Re-Discover a Lost Art – Apprenticeship
4. Eight Characteristics of Successful Writers
5. Celebrate Reading *and* Add it to Your Plan
6. Join a Writer’s Organization and Much More
7. Platform Building Ideas for Every Author Get your FREE Ebook at: www.terrylinks.com/pb
8. Always Be Training
9. Find the Right Agent Download a FREE list of over 400 agents: www.terrylinks.com/agents
10. Repurpose Your Content
11. Engage the Marketplace
12. When You Face Adversity and Rejection

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Developing a Writer's Plan

Key Quotation: "If you fail to plan, then you plan to fail."

Eight Time Wasters:

1. Email
2. Regular Mail
3. Telephone Calls
4. Following the News
5. Television
6. Family Interruptions
7. Volunteer Obligations
8. Writing Opportunities

Solutions to Time Wasters:

1. Email – Evaluate your reading and set specific times each day
2. Regular Mail – ask is it actionable and take action
3. Telephone Calls – set specific limited times to talk on the phone
4. Following the News – make a limit
5. Television – wean yourself from the one-eyed monster
6. Family Interruptions – take control with a sign on your office door
7. Volunteer Obligations – limit and disengage
8. Writing Opportunities – evaluate each one carefully

Set Reasonable Goals

Set Short-term Goals

Create a page goal for each project and stick with it

Create a Big Hairy Audacious Goal (BHAG)

Create a long-term goal for yourself and focus on it each day. How are you moving ahead toward accomplishing it?

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Eight Characteristics of Successful Writers

Introduction

1. Rise To the Challenge
2. Understand and practice the pain of discipline
3. Combine persistence with perseverance
4. Willing to learn from every possible source
5. Embrace the partnership with editors and other publishing professionals
6. Know the power of information
7. Know the importance of relationships
8. Constantly search for the next opportunity to practice their craft

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Session 3 The Importance of *The Pitch*

Introduction

Fiction vs. Nonfiction

Book Proposals That Sell

Five Questions Every Book Editor Asks:

1. Is it true? Does this person know what they are talking about?
2. Is the book significant? How many people care about this subject and why?
3. Is it well written or at least salvageable? Will the reader be captivated by the paragraphs?
4. Will enough people pay to read this?
5. Can the publisher afford it?

Six Reasons Book Ideas Are Rejected

1. Sounds like a magazine article
2. It's already been done.
3. It's never been done--editors don't see a market for your book
4. Topics like that don't sell.
5. There is too much competition
6. It's too expensive to produce--length or photos or illustrations, etc.

Six Ways for Your Proposal To Stand Out

1. Create your own marketing plan and why <http://snipurl.com/marketingplan>
2. Follow *Pyromarketing* <http://snipurl.com/pyoint>
3. Gather high-profile endorsements <http://www.terrylinks.com/Elder>
4. Bring special sales <http://www.bookpublishing.com>

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5. Gather sales outside of the bookstore *Beyond the Bookstore*: <http://terrylinks.com/BJBTB>
6. Have A Must-Have Title for your book

Resources For Every Book Writer

Book Proposals That Sell, 21 Secrets To Speed Your Success www.bookproposals.ws or <http://www.right-writing.com/ways.html>

Editor Reveals Book Proposal Secrets (over *three hours* of teaching about book proposals on audio CD): www.editorbookproposals.com

Free Ebook #1, **Straight Talk From The Editor**: <http://www.straighttalkeditor.com>

Free Ebook #2, **Book Proposals That Sell, Extra Special Report**: <http://www.bookproposalcoach.com> (a 90-page Ebook)

Book Proposal Check List

Is Your Idea Saleable?

- Who is your audience?
- Why would they want to read your book?
- Research at several large bookstores to see if anything is already available.
- Check a large major library for competitive titles
- Look at Amazon.com but understand it's not always correct.
- What makes your idea significantly different or better than the competition? These distinctions are your primary selling points. You need at least one major distinction between your idea and the competition for it to be saleable.

Proposal Mechanics

Most book proposals range from 15 to 30 pages. These proposals are always 100% typo-free and double-spaced with generous margins. The proposal takes many forms and the writer inevitably dictates the shape of the proposal. The common elements include:

- Overview** -- this is the most important part of your proposal and should be 1 to 3 pages long. In clear and succinct style it covers:

What is the book about? Why the book is important, useful and necessary?

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Who is the audience? Who will buy this book?

What makes the book different or better than any other book in on this subject?

What is the book's marketing handle? This is a twenty word or less description.

What can you do to help the book in terms of promotion?

Chapter Summaries. These summaries are an outline of the book. They can be as long as you desire but no less than 150 words for each chapter. Select the format, which works best for you--i.e. outline, narrative, bulleted list of key points, etc.

The Sample Chapter You will need at least one sample chapter and probably two chapters (if a chapter is less than ten pages). These chapters should give the reader a strong sense of the book's tone and style.

About the Author. Don't be shy. Why should the editor give you this project? Of everyone in the world why you? Specifically show how you are the most qualified individual for this project. Every editor is investing at least \$50,000 so show your worth.

The Competition. Everyone believes their book is unique. **It's not** so please detail five or six books will be in direct competition.

Manuscript Delivery and Length—important information and many people do not include this information. Your vision for the book is very important.

Promotion/ Special Markets/ Volume Buy Backs (anything over 5,000 copies)/ Endorsements/ PyroMarketing

Strategies for a Six-Figure Advance

A Study of 20 Books That Recently

Sold For Over \$100K

By Mahesh Grossman

GetPublished@AuthorsTeam.com

<http://www.AuthorSecrets.com>

When I speak with veteran writing coaches, they seem surprised to hear that even in today's conservative market, many first time writers are still getting six-figure book advances. Sure, the majority of publishing deals for novices are still in the \$10,000 to \$25,000 range, but the right book at the right time can earn a lot of money, even for someone who isn't famous.

This report is a study of twenty books that were reported as receiving advances of \$100,000 or more by Publisher's Lunch, a free newsletter available at:

<http://www.publishersmarketplace.com/lunch/subscribe.html>

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These books were chosen because the authors were not famous and didn't have super successful books prior to the one for which they were paid so much money. Many of these authors are actually first-timers.

On the other hand, most of these books couldn't be written by just anyone. In most cases, the authors are uniquely qualified to write about their subjects. Generally, if just anyone knows enough to write about a particular topic, it doesn't merit a \$100K advance.

This report was partially inspired by Susan Page's work. She came up with seven requirements for a six-figure book advance. I'll paraphrase them here. They are:

1. A show stopping title
2. An idea for a book that has a large audience
3. Proof that you are an expert on your topic, or foreword promised to you by such an expert and preferably one who is well-known
4. An extremely well-written proposal
5. A book coach (who will ensure your proposal is as well-written as you think it is.

The five people I know personally who have earned 100K for a book all had book coaches or professional editors.)

6. A top-notch agent
7. Willingness to appear on talk shows and to be interviewed by journalists.

Look at my list and you will see additional qualities that motivate publishers to shell out a lot of money for a book: Unique ideas (especially ones that fill a hole in the market), books that can be tied to a trend or start one, controversy, and most of all, a new way of addressing universal needs or desires.

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Session 4 Get Published *Now*: Essentials for Independent Publishing

Solomon told the truth centuries ago:

“**There’s no end to the publishing of books...**” (Ecclesiastes 12:12, *The Message*)

Take A Bird’s Eye View Of The Book Marketplace

What is a definition of a “successful book?”

Why can’t I find my book in a bookstore? Is that OK?

Book Statistics

Five Terrible Reasons To Use An Independent Publisher

1. You are afraid of rejection.
2. You are impatient.
3. Someone told you there is no market for this book and you are out to prove them wrong.
4. You are too lazy to pitch your book to editors and agents.
5. You thought all new writers went this route and fell for a pitch from an independent publisher.

Ten Reasons To Work With An Independent Publisher:

1. Your timing is different from a traditional publisher.
2. You know your audience and how to reach them.
3. You work with a specialized audience.
4. You love marketing, selling, networking and publicizing your work
5. You speak and want to have books to sell
6. You want to test the marketplace.
7. You want to make more money.
8. The quality of independent published books has improved.
9. You want to maintain control over the title and appearance of your book
10. You want to learn the details of the publishing business.

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Seven Keys To Success With An Independent Publisher:

1. You have written a quality manuscript and learned the craft of writing.
2. Or you have hired a ghostwriter for an excellent manuscript (foundational).
3. You have a market or are willing to create a market for your product.
4. You understand the importance of book distribution – brick & mortar stores like Barnes and Noble and Target plus the Internet.
5. You understand the necessity of on-going marketing for your book.
6. You understand more than 60% of books are sold outside of the bookstore.
7. You are willing to continuing grow in your publishing knowledge.

Beyond This Workshop – Resources For Additional Study:

1. A List of Self-Published Authors and Their Books:
http://www.llumina.com/self_publishing.htm You are not alone.
2. ***How To Make Real Money Selling Books (without worrying about returns)*** by Brian Jud, Square One Publishers, 376 pages, \$24.95. Subtitled, A Complete Guide to The Book Publishers' World of Special Sales. This book is packed with insight and current information.
<http://amzn.to/2pHT672>
3. ***Beyond the Bookstore, How to Sell More Books Profitably to Non-Bookstore Markets*** by Brian Jud, Reed Business Press, 304 pages, \$49.95. Hardcover with CD-ROM. Note you can likely find it cheaper online. Have you ever read the sales numbers of a particular book and scratched your head wondering how that title sold in the bookstore? Some of those big sales numbers have sold outside of the bookstore. In fact, more than half of all books sold each year are sold outside of bookstores. Often an author believes their task is to write the best possible book, turn it over to the publisher and press on to the next project. It's always important to write the best possible book but more publishers are turning to the writer for sales assistance. This book is a valuable resource for any writer to think outside the box about how to sell their particular book. Jud covers 79 specific strategies for generating "special sales." These specific ideas can be incorporated into a nonfiction or fiction book proposal to show your publisher from the beginning that you will be proactive about special sales. <http://terrylinks.com/BJBTB>
4. **The Book Publisher's Handbook** by Eric Kampmann, Beaufort Books, 138 pages, \$13.95. This book provides an excellent overview of the publishing process and pitfalls for each stage of publishing. Also six excellent and encouraging case studies are included.
<http://amzn.to/2p5ZD7v>
5. Contact W. Terry Whalin at Morgan James Publishing terry@morganjamespublishing.com or call 516-900-5711

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Session 5 Understanding and Negotiating a Book Contract

Some Legal Disclaimers

- I am not an attorney nor will I be dispensing legal advice in this class
- To properly understand a book contract, you should contact a literary attorney

Contract Resources

The Author's Guild (www.authorsguild.org)

Author Law (www.authorlaw.com)

Author Law A – Z, A Desktop Guide to Writers' Rights and Responsibilities by Sallie Randolph, Stacy Davis, Anthony Elia, and Karen Dustman, Capital Books, Inc. 2005

Book Contracts

You have a book contract. Congratulations. Now what?

Examination of a sample book publishing agreement

Joan Collins Contract: <http://www.terrylinks.com/JCC>

Some Non-negotiable (in general): Publisher titles the book, edits the book, and writes the back cover material for the book.

Contract Dos and Don'ts by Sallie Randolph

Some basic terms and negotiating tips

Is everything right or are you prepared to walk away?

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PUBLISHING AGREEMENT

This Agreement is made this 7th day of June 2017, between I. Noah Tall of 321 Apocalypse Drive, Hot Coffee, Mississippi, the Author and/or Proprietor (hereinafter called "the Author"), and Gargantua Publishing, doing business at Holy Huddle Drive, New York, NY (hereinafter called "the Publisher"), whereby it is mutually agreed:

GRANT OF RIGHTS

The Author grants to the Publisher exclusive world rights to print, publish, and sell in all book forms including data base, electronic and computer publishing throughout the world during the full term of copyright and all renewals thereof an unpublished work tentatively entitled:

THE GREATEST BOOK EVER WRITTEN:

EVEN BETTER THAN HARRY POTTER, JOHN GRISHAM, MAX LUCADO AND *LEFT BEHIND* COMBINED

together with all subsidiary rights as specified under Other Rights, page 2.

AUTHOR'S GUARANTEE

The Author guarantees that he/she is the sole Author and/or Proprietor of said work, and that it in no way violates any copyright belonging to another party; that it contains nothing of a libelous or scandalous character; that it is not in violation of a right of privacy or otherwise contrary to law; and that he/she and his/her legal representatives will hold harmless and keep indemnified the Publisher from all suits and all manner of claims, proceedings, and expenses, including attorney's fees, which the Publisher may incur on the grounds that said work is a violation of any proprietary right or copyright, or contains anything libelous, scandalous, or otherwise unlawful. The Author shall not, without the consent of the Publisher, publish or contract to publish any abridged or other edition of the said or similar work that shall conflict with the sale of the work covered by this agreement.

MANUSCRIPT

The Author agrees to deliver to the Publisher on or about the 2nd day of October 2017, a complete, typewritten manuscript of the work, satisfactory to the Publisher in content and final form, including all photographs, drawings, charts, index, appendix, bibliography, or other supplementary matter. The Author shall be solely responsible for obtaining from the original copyright holders any necessary permissions and any payments that may be required for said permissions for using said copyrighted material in his/her manuscript. The Author must notify the Publisher if any portion of his/her manuscript has previously appeared in print. In the event the manuscript is not in final form satisfactory to the Publisher, including the aforementioned supplements, the Publisher shall have the right to edit and revise the manuscript prior to first publication, or to any subsequent printing; provided, however, that such editing or revision shall not materially change the meaning, or materially alter the text of said work without the Author's consent. Editing to correct infelicities of expression, misstatements of fact, misquotations, errors in grammar, sentence structure, and spelling, and editing to make the work conform to the Publisher's style of punctuation, capitalization, and like details shall not be considered as materially changing the manuscript.

The Publisher will use the same care in protecting the manuscript and accompanying material as customary practice demands in protecting similar material in its possession, but it shall not be liable for damages resulting from the loss or destruction of such materials, or any part thereof.

COPYRIGHT

The Publisher shall have the right to register the copyright of the work and all renewals of such copyright in the name of the Author in any and all countries of the world. It shall also have the right to any assistance from the Author as may be necessary to protect the copyright and renewals thereof

PRODUCTION, PUBLICATION, AND ADVERTISEMENT

The Publisher agrees to publish the work at its own expense. The Publisher shall have the right:

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- (a) to publish the work in one or several volumes, and in such form, style, size, type, and manner, including paper to be used, as it deems best suited to the sale of the work;
- (b) to set or alter the title and prices at which the work shall be sold;
- (c) to determine the date of publication, the method and means of advertising, promoting, and selling the work, and all other publishing details, including the number of copies to be printed, if from plates or type or by other process;
- (d) to postpone the publication date in the event of delay from causes beyond its control;
- (e) to publish subsequent and revised editions whenever, in its judgment, it is deemed advisable;
- (f) to decide how long plates or type shall be preserved, when they shall be destroyed, and if and when reprints shall be made.

AUTHOR'S CHANGES

The Publisher shall furnish the Author with galley proofs of the work. The Author agrees to return such proofs promptly to the Publisher with his/her corrections, and further agrees that the expense of the Author's corrections (other than those due to typesetting errors) exceeding 10% of the cost of composition shall be charged against and deducted from the Author's royalty earnings.

ROYALTIES

The Publisher agrees to a royalty advance of \$1,000.

The Publisher shall pay to the Author on all copies sold (less returns) royalties, as follows:

- (a) On copies done by the Publisher in regular hard binding or quality paperback (except as provided 12% of the Publisher's net receipts.
- (b) On copies done by the Publisher in mass market paperback (except as provided below), 10% of the Publisher's net receipts.
- (c) On an edition published or reprinted by another publisher or a book club in the United States or elsewhere through license of publication rights, lease of plates or otherwise, 40% of the Publisher's net receipts. If sheet stock or bound books are sold to a book club or another publisher, or sold for export, a royalty of 10% of the net amount received will be paid to the Author. If copies are sold to non-trade accounts, a royalty of 10% of the net amount received will be paid to the Author.
- (d) No royalty shall be paid on any copies given away for the purpose of review and promotion, or on copies damaged by fire or water, or on copies sold as overstock, at or below cost.

OTHER RIGHTS

The Publisher shall have the exclusive right to arrange, in behalf of the Author, for the sale of all other rights, including serialization, syndication, translation, digest, abridgment or condensation, film or video, dramatization, radio, television, mechanical rendition and/or recording, or any other use of the subject matter; and if these rights are sold, the net royalty earnings shall be divided equally between the Author and the Publisher.

USE OF SELECTIONS

The Publisher, after the work has been published, may publish or permit others to publish such selections, digests, abridgments, serializations, syndications and mechanical, visual, and sound reproductions or recordings as it thinks proper, without compensation to the Author or the Publisher if, in the judgment of the Publisher, such use may benefit the sale of the work.

AUTHOR'S COPIES

The Publisher will furnish ten copies of the published work to the Author without charge. Should the Author desire additional copies (not for resale to dealers), they shall be supplied at a 40% discount from the retail price, shipping charges additional.

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ACCOUNTING

The Publisher shall prepare semi-annual statements, accounting for all sales (less a reasonable allowance for returns) through February 28 and August 31; such statements to be mailed along with payment within three months of those dates. The Author agrees that any account, bill, or amount due of any nature that may be due the Publisher by the Author, whether under this agreement or not, shall be chargeable against and shall be deducted from any and all royalties accruing to the Author under this and/or other agreements between the Author and the Publisher.

TERMINATION OF PUBLICATION

If the Publisher finds the sale of the work reaches a point not justifying reprinting, it shall have the right to declare the work as out of print. By written notice to the Author's last known address, the Publisher shall advise the Author of this declaration, and the Author shall have the right for thirty (30) days from notice date to purchase the films, if any, of the work at one-half the original cost of composition, design and films, and remaining bound copies or sheets, if any, of the work at cost, shipping charges additional. If the Author fails to purchase, as aforesaid, the Publisher may dispose of any such films, bound copies, and sheets without further liability for royalties.

ASSIGNMENT

This agreement shall inure to the benefit of and be binding upon the Author's heirs, administrators, and assigns, and the successors and assigns of the Publisher, but no assignment, either voluntary or by operation of the law, shall be binding upon either party without the other's written consent.

OPTION

For and in consideration of the personal promotion and publicity to be rendered by the Publisher for and in behalf of the Author in connection with the advertising and promotion of this work, the Author grants the Publisher an option on his/her next book. In no case shall the Publisher be obligated to consider said next book sooner than six months after the publication of the work hereby contracted for.

RECIPIENT OF ROYALTY

The Publisher, until advised otherwise by the Author or his/her legal representatives, along with proper documentation, will issue the royalty check payable to:

Name:

Street Address:

City, State, Zip Code:

WITNESS the signatures of the parties hereto:

to be paid within thirty days of the following:

The Publisher

Date

The Author

Date/Social Security Number/Citizenship

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Improving Your Book Contract: Negotiation Tips for Eight Typical Clauses

Authors Guild members receive a free 75 point contract review from the Guild's contract services.

Grant of Rights

What the clause does: The grant of rights clause transfers ownership rights in, and therefore control over, a work from the author to the publisher. The Guild recommends limiting the publisher's exclusive right to publish. An author should be reluctant to grant rights in any medium, territory, or language that s/he believes the publisher is not capable of exploiting adequately.

Negotiation tips: Never transfer or assign the copyright.
Limit the media in which your publisher is granted rights.

Publication

What the clause does: The function of this clause is to ensure that the publisher will publish the book in a timely matter and promote it effectively. It gives the author some control over the editorial process after s/he has delivered the final manuscript.

Negotiation tip: Make sure you are entitled to terminate the contract, regain rights all in the work, and keep the advance if publisher fails to publish by its deadline.

Copyright

What the clause does: The revised Copyright Act does not require authors or their publishers to "secure" copyright in written works. For works created after 1978, copyright automatically exists when the author first expresses his creation in "tangible form." But important benefits accrue from registering the work within three months of its initial publication.

Negotiation tip: Require the publisher to register copyright within three months of initial publication of the work.

Advance

What the clause does: The advance is the money the publisher pays to the author in advance of publication, which must be "earned back" through royalty sales.

Negotiation tips: Research past advances given by this publisher in industry publications such as Publishers Weekly.

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Bargain for as large an advance as possible—the publisher will have more invested in the work.

Royalties

What the clause does: In traditional trade book publishing, many authors have been able to negotiate the following list-based, hardcover royalty scale: 10% on the first 5,000 copies sold, 12 ½ % on the next 5,000, and 15% thereafter.

Negotiation tips: Base royalties on list (i.e., retail) price, not net income (i.e., wholesale price) If royalties are based on invoice prices, define invoice price as only list price minus freight charges. Limit the publisher’s ability to sell at deep discounts.

Subsidiary Rights

What the clause does: Subsidiary rights are uses of the work that go beyond the initial publication—such as book club sales, sales to paperback publishers, foreign sales, TV and movie rights. Often some of these rights are granted to publishers, who then license them to third parties and share the proceeds with the author. Subsidiary rights clauses not only state the share of the subsidiary rights income the author will receive, it also clarifies which rights the author has granted to the publisher.

Negotiation tips: Consider reserving rights outside of the traditional grant of “primary” subsidiary rights. Secondary rights include animation, textbook, character, electronic, dramatic, motion picture, radio and merchandising. Beware of any over-inclusive language, such as “now known or hereinafter invented,” “including, without limitation,” “all,” “or” in any form, in the grant of subsidiary rights.

Make sure you are fairly compensated for these rights. All credible publishers agree to share at least 50 percent, and often much higher shares of sub rights income, with their authors.

Accounting and Payments

What the clause does: An accounting and payments clause sets forth the frequency, content, form and timing of statements of account for the royalty and sub-rights payments due the author under the terms of the contract. It should also give the author the right to publishers’ records on the authors’ sales.

Negotiation tips: Include a right to examine or have your representative examine the publisher’s books and records relevant to your work. Royalty statements should be detailed, and you should be able to receive additional information upon request.

Out of Print

What the clause does: The out-of-print clause defines when the book is no longer considered to be in print. This definition is important because it usually defines when

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the author gets back all rights she granted to the publisher under the contract.

Negotiation tips: Make sure all rights revert to you when the work goes out of print or soon thereafter.

Define “out of print” as “not available in the U.S. through regular retail channels in an English language, book form edition and listed in the publisher’s catalog.”

Specify that availability through print-on-demand or other electronic or mechanical means alone does not make a book “in print”.

Contract Q and A by Sallie Randolph

Sallie Randolph is senior partner in Randolph Law Offices LLP, a law firm that focuses on representing author clients. She is also a journalist and a member of American Society of Journalists and Authors. These questions and answers are taken from a column that she writes for the ASJA Newsletter. Readers are reminded that this information is for general information only and that any specific legal problems should be discussed with an attorney.

Q: Do you have a standard collaboration agreement for me to use? I'm going to be ghostwriting a book for a well-known doctor.

A: I am often asked to provide a “standard” contract for one purpose or another. Sometimes I’m asked to look over a particular clause and ask how it can be adjusted to suit the writer’s needs. My reply in these cases is the same – there’s no such thing as a standard contract. Each contract is an agreement between two parties that is enforceable by a court and it’s essential that it reflect the reality of the relationship between those parties.

Any contract must be evaluated as a unified whole. It’s a dangerous practice to tinker with one part of a contract without making sure that other parts aren’t affected or that other parts don’t contradict the changed clause. For this reason, I always insist on seeing the entire contract before commenting on any part of it.

As to the adaptation of a “standard” contract to an individual situation, I am reluctant to recommend this practice to writers, especially with collaboration agreements which present particularly challenging legal complexities. In my experience, collaboration agreements can cause more problems than any other type of publishing contract and should be carefully drafted so that they reflect the true intentions of the parties and use legally correct language. Legally correct language is especially important in the area of copyright ownership and transfer, an issue that often comes up in collaborative projects.

There’s nothing wrong with saving effort and money by starting out with a form agreement or attempting to adapt someone else’s contract. But it would be a smart investment to have your final draft reviewed by a capable attorney before signing it. A modest legal fee upfront beats paying large fees later to untangle the mess that a do-it-yourself-contract can create.

To paraphrase an old saying: “The writer who acts as her own lawyer has a fool for a client.”

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Q: What is a cross-collateralization clause? I've been told to watch out for this, but I don't know what it is.

A: Cross-collateralization is highly unfavorable for writers because it authorizes a publisher to make deductions from the income of one work for sums owing on another work. Such sums can be charges for the cost of alterations, permission fees, fees for revisions, overpayments, or an unearned advance. The cross-collateralization clause is unfair because it gives the publisher de

facto insurance against an unsuccessful project by permitting recovery from funds due to authors on other projects.

Here is how to spot these clauses, and what to do when you find them. First, a cross-collateralization clause is not likely to be labeled as such. It may be referred to as "Over Payments," "Deduction of Sums Owing Under Other Contracts," or "Joint Accounting." Look for any language in the contract that authorizes the publisher to deduct money owed to the author for other works.

If the publisher refuses to delete the provision entirely try a compromise position: 1) that no deductions for sums owed under other contracts be made from an advance owed to the author, but rather, any deductions be made from the future income stream; 2) that unearned advances not count as sums owed to the publisher.

Q: I have ghostwritten a book proposal and manuscript for a psychologist interested in publishing a self-help book. We have no written collaboration agreement, but have agreed verbally that I'll get 2/3 of any advance and half of all subsequent royalties and income. I was paid an upfront fee for the proposal. The psychologist has circulated the proposal and manuscript to several agents. So far the work isn't represented, but she has hinted that she's having second thoughts about my share of the proceeds. I think she may be planning to hook up with a different writer. Can she really do this to me? Without a contract, what recourse do I have?

A: Your major concern should be protecting your work from unauthorized use. The very first thing you should do, therefore, is to register both the proposal and manuscript with the Copyright Office. Since the material is unpublished so far, you do it by printing a complete copy of everything and sending it in along with a payment of \$30 and a completed Form TX, which you can download from the Copyright Office web site.

Registering your unpublished work with the Copyright Office before it is infringed is critical in securing the maximum protection under the Copyright Act. Such timely registration can entitle you to statutory damages and attorney's fees and, therefore, provide significant leverage in later disputes over the work. This can mean the difference between a satisfactory resolution and frustration for an author.

Next, a frank discussion with the psychologist is in order. Explain that she is not entitled to leave you behind, even if she doesn't use your work. Although it may be a difficult time to address the possibility of a written collaboration agreement, you should try. In any event, you do have a contract between you despite the fact that it's not in writing all and in one place. Emails or letters explaining your relationship or discussing the project can serve as evidence of your agreement. With some luck, you may be able to prevent the relationship from falling apart and successfully complete the project. If you

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are unsuccessful, you may wish to consult an attorney to discuss what remedies are available to you under contract or copyright law.

Q: A group of other writers and I were having a discussion about rewriting and selling stories, if you had sold all rights to previous versions. To what extent must you rewrite to avoid copyright infringement? I have looked and asked in vain for a definitive answer -- or even an authoritative and marginally helpful one. Are you familiar with any relevant statutes or case law? I do understand that in one case copyright infringement occurred on the basis of just two distinctive words.

A: The reason you've had trouble finding a "definitive answer" is that one doesn't exist. This is another question to which the answer is "it depends." It depends, in large part, on whether the particular all rights contract you signed had the effect of transferring the copyright to the publisher. That could have happened in a work made for hire agreement or in an all rights agreement that specifically assigns the copyright.

Absent a clear assignment of copyright, an all rights contract still leaves you as the author and owner of the underlying copyright. True, that underlying copyright is a mere shell of its former self, but it does leave you with the right to create a derivative work, a work "based on" the original. When you have the right to create a work based on the original you can revise fairly lightly and probably be OK, although it would still be wise to make your revisions as extensive as possible.

If, on the other hand, you did convey the copyright to the publisher, then you have only the same fair use rights as anyone else. (See this month's letters to the editor column for an exchange of opinion on this subject.) To make fair use of your own work, you can quote briefly from it and go back to and quote from the same sources, but you should write the rest of the article from scratch.

To avoid this problem altogether, you should avoid signing all rights or WMFH contracts at all. You can tell the publisher who proffers one that you'll be happy to license the rights the publisher reasonably needs at a fair price, but that all rights aren't available. If it's too late because you already signed all the rights away, you can still avoid a problem by getting the publisher's permission to license reprints. If the publisher doesn't care, you'll probably get permission. Consent is a complete defense to copyright infringement, so you change as little or lot as you wish. Even verbal consent is OK, although it would be better to follow up on the verbal consent with a letter thanking the publisher for giving you permission and still better to send the publisher two copies of a letter agreement that asks the publisher to acknowledge the consent by signing and sending back to you. In this case, enclose as SASE to make it as easy as possible for the publisher to do what you want her to do. If you intend to rely on the verbal consent, make a note of the name of the person you talked to, the date, the time, the number called, and the gist of the conversation. Keep those notes in your records. If it's legal to tape a phone conversation in your state, do that, too.

You should also consider the ethical implications of your question. Some methods of recycling an article may be completely legal but ethically ambiguous. If you have doubts, getting permission is probably the best method.

Q: I've just been offered my first book contract, from a small regional publisher. I didn't use an agent and I really want this deal, so I plan to go ahead and sign the contract, even though it's not perfect. I don't want to spook the editor by asking questions or making waves. A friend of mine said that if I

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don't have an agent I should have a lawyer check the contract over, but I don't want to pay a lawyer to raise unnecessary questions. No offense, but my experience is that lawyers just make things unnecessarily complicated. And they charge an arm and a leg to muck things up.

A: First of all, any legitimate publisher is not going to be offended by reasonable questions about a contract and no good attorney is going to be offended by your concerns about the way the attorney will approach a contract review or by a request to keep fees reasonable. That said, I can well understand that you might be uncomfortable raising contract questions, especially if there's nothing seriously wrong with the contract. But there's no reason you can't ask an attorney to do a quick review, look for any serious problems and, should any important questions arise, make suggestions as to a good way to raise them with the publisher. The charge shouldn't be very great for a simple consultation.

You may also be more comfortable just asking an attorney to handle all the negotiations on your behalf. If you tell the attorney you don't want to stir up any unnecessary trouble, the attorney should be able to step in and spare you the agony of negotiation. The fee might be a little higher for such extended involvement, but it can free you and the editor to concentrate on producing a good book while someone else handles the legal details. Many publishers actually prefer to deal with lawyers or agents, and having an attorney handle the negotiation for you is a way to communicate your status as a serious professional writer.

If you really don't have the resources to pay an attorney, or if you can't find an experienced publishing attorney to help you, you should be aware that the Authors Guild provides a free legal evaluation of any book contract to its members. Your contract review will be done by a legal intern working under the supervision of a staff attorney, but it will be competent and very thorough. The Authors Guild will only provide you with advice, though. They won't represent you in a negotiation. And the turn around time is sometimes longer than busy writers are willing to wait. But the Guild legal program is an invaluable resource to keep in mind.

Q: I wrote two young adult fiction books years ago (in the early eighties) for a flat fee on a work made for hire basis. These two books are long out of print and the publisher is out of business. I have two problems. First, can I get the rights to these two books back? And second, the contract I signed called for me to write a total of six books under the same terms. The contract also said they were to be my "next" six books. If publisher is out of business can I forget about the other four books? The first publisher was bought out by another publisher and that second publisher has faded from the scene.

A: Let's talk about your second question first. Since the publisher is no longer in business and never asked you to produce the last four contract books while it was still publishing, it is not possible for you to "perform" on the contract. So this particular contract clause is not enforceable and I wouldn't worry about it. Even if the first publisher were still in business, if years have gone by without the publisher requesting you to write the next books a court would be reluctant to enforce a contract that unreasonably restrains your right to ply your trade.

As to getting the rights back to your first two books, I would need to examine the contract for "belt and suspenders" language in the work made for hire clause. A contract that simply says the work is considered as a work made for hire is probably not valid. That's because books (except textbooks) are not among the specific categories qualified as work made for hire under the copyright law as it was substantially revamped effective in 1978. If, on the other hand, the contract says something like "in the

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event that the Work is ever held not to be a work made for hire, the Author hereby agrees to assign the copyright to the Publisher,” then the original publisher may be the copyright owner. Assuming a lack of belt and suspenders language, the work made for hire language is not valid because your book isn’t a covered category under the law. The next question is if the contract didn’t convey the entire copyright to the publisher, what rights did the publisher acquire? Lawyers don’t agree on this and there are no definitive cases to guide us, so the best we can do is make an educated guess. My guess is that a court called upon to interpret such a contract would construe it in a light least favorable to the publisher and would say that the publisher acquired the right to publish the book, period. Once the book is out of print and the publisher defunct, the rights would naturally revert to the author.

Very often the legal implications of a decision are something of a gamble based on an analysis of the risk. In this case, your risk is pretty low. The publisher who might try to enforce any rights under that contract is long gone, and, even if someone unearthed that old contract and tried to hold you to it, I doubt that the courts could enforce it. So I’d say that you are reasonably safe. The only potential problem I can see is if you try to license those two old books to a new publisher, you might be asked to warrant that the rights are clear. If you decide to try to get those books published, you would be wise to run your new contract past an attorney. In fact, you’d be wise to run *any* book contract past an attorney or agent.

Q: I have frequently said that ASJA should put together a model magazine contract for members to use in contract negotiations. It seems to me that this is something that you could easily do, so why don’t you?

A: I think model contracts do more harm than good. First of all, few publishers take them seriously. Traditionally the publisher is the one who offers a contract to an author, not the other way around. For the writer to proffer her own contract will look pretentious and unprofessional to many publishers.

But that’s not the main reason I’m opposed to model or “fill in the blanks” contracts. A contract is a custom agreement designed to fit a particular set of circumstances and should be carefully drafted to fit the specific terms agreed to by the parties. Model contracts frequently include inapplicable provisions and leave out important things. Sometimes the individual filling in the blanks doesn’t really understand what the terms mean. Sometimes specific words are legally required to ensure a certain result. Sometimes certain words sound benign but have a draconian legal effect. Sometimes relying on a model can be a shortcut to disaster.

Q: My publisher has violated our contract in several ways. The most serious problem is that royalty payments are always late. On two different occasions, the payments were not enough and I had to raise a fuss in order to get what was owed me. The publisher is not marketing the book as aggressively as he could. Is there any way I can get out of this contract?

A: The first step is to consider diplomatic action. Talk to your agent if you have one. She should be able to apply pressure to the publisher.

If you seek a legal solution, you should be aware that the publisher must usually fall far short of its contractual obligations before the author can terminate or rescind the contract. A court will generally permit termination only in the event that the licensee has committed a material breach of the publishing agreement. Courts define a material breach as a breach of so substantial a nature that it “affects the very

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essence of the contract and serves to defeat the object of the parties.” The breach must, in fact, constitute “a total failure in the performance of the contract.” This is a high standard.

In various cases, courts have applied the above test and concluded that delays in royalty payments and certain short falls in amount paid do not amount to a material breach. However, while a publishing agreement can rarely be terminated entirely, there are circumstances when the high standard for a material breach does not apply. Furthermore, even though you are might not be entitled to terminate the contract, you may be entitled to damages for the publisher’s breach. Accordingly, it is best to consult a knowledgeable attorney who can review your contract and the facts of your case.

Q: I’ve just been offered a contract to write one article a month for a web site. It has a clause that says I am to be an employee and that everything I write is to be considered a work made for hire. Another clause says that I am an independent contractor. So, if I sign, what will my employment status be?

A: I haven’t seen the entire contract, but it sounds like this web site was trying to insure that it will both own the copyright and avoid responsibility for tax withholding, social security and other such obligations of an employer. It also sounds like the contract was patched together by someone trying to avoid paying a lawyer. Whenever a contract is internally inconsistent, it could be subject to interpretation by a court if a dispute arises. In this case, I suspect the court would decide that the “employee” language is less significant than the “independent contractor” language. You might suggest that the language be clarified. If it isn’t, however, I don’t see this as being a critical element as long as you understand that you are giving up copyright ownership and probably won’t be getting any employee benefits.

Q: I’ve received a letter from a lawyer who represents the author of a book on the same subject as mine accusing me of infringement and threatening to sue me if I don’t agree to pay a settlement. As I said, my book is about the same subject, but I did not copy the other author’s book. I wasn’t even aware of the other book until after my own book was written and submitted to a publisher. I consider this to be an outrageous attempt at blackmail. What should I do?

A: If you never even read a copy of the other book before you completed your own, and you are certain that you haven’t copied anything, you have a defense of “independent creation.” In order for the other author to succeed in an infringement suit against you, he would have to prove that you had access to his book and that your book is “substantially similar” to his. This is a difficult standard to meet.

If you are confident that your own book is not substantially similar, you probably shouldn’t dignify the letter with an answer. If you do decide to respond, however, you should not try to handle it yourself. You might inadvertently do or say something that would compromise your position. I’d consider discussing this situation with a lawyer.

If this other author has contacted anyone else (such as your publisher) about this alleged infringement and if the claim is really as baseless as you say, you may have a cause of action against the other author for injury to your reputation, interference in your relationship with your publisher, or for hurting your profits. Again, you would be wise to get the help of a good lawyer.

You should contact a lawyer immediately if you are actually sued. Even if the lawsuit is totally baseless, you’ll need legal help.

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Q: My agent sold my first two books, which are still selling well, but he hasn't really done anything with my two most recent proposals. I get the feeling he has bigger fish to fry and that my books aren't the blockbuster types he would prefer. I've decided that another agent might be better for me, but I'm not sure how to proceed from here, from a legal perspective. What do you suggest?

A: You should start with a clear understanding of the legal relationship between you and your present agent. Do you have a written agency agreement or a handshake deal? If you have a written agreement, it probably spells out how the relationship may be ended. For example, either party might be able to terminate upon written notice to the other. The contract might spell out the timing of such notice and, perhaps, specifics such as a requirement to use registered mail. So examine the contract and follow the specified procedure exactly. This is important even if your agent says it's not necessary. It's very important to be precise when dissolving a contractual relationship. This doesn't mean you can't talk to your agent ahead of time to reach an informal understanding. It just means that you should follow up by dotting all the "i"s and crossing all the "t"s. If you have no written agreement, you should plan to give your agent reasonable notice that you're making a change and you should do so in writing so there can be no misunderstanding.

Be aware that the change you're making is only for future deals. You will remain obligated to your first agent for any commissions and expenses related to your first two books. He will also probably continue to receive payments on your behalf and forward them to you after deducting what is owed to him. It may be possible to negotiate a different arrangement, but, if you do, be sure to get a written acknowledgement of the new terms from him. Since your books still generate income, the first agent will probably want to remain agent of record. In the future, though, when the income thins out, he might be agreeable to a change.

Q: My editor recently approached me about doing a revision of a trade book I wrote for her several years ago. But when I found out that the "revision" involved nearly doubling the size of the book and substantially changing the tone, I declined. Now the editor has hired another writer to do the "revision." The new writer is going to share the copyright with me, get a substantial advance and then get half of my royalties when it earns out. What can I do?

A: Your question raises several issues that revolve around the revision clause of your contract. You should look at that clause to determine whether your editor's "revision" and the deal with the revising writer is consistent with your publishing contract. Unfortunately, a broad revision clause is an invitation for the publisher to select to a collaborator for you who will share your credit, your copyright and your royalties.

The revision clause will dictate what amount of work may qualify as a revision, when the revision can take place and how the process will be handled. If revision is undefined in your contract, your editor will have some latitude in arguing that her plan is a revision. Ideally, however, your revision clause will include a definition of revision that caps the amount of new matter at no more than 25%. You should address this point when you negotiate the contract. If your editor is suggesting changes outside the scope of a permissible "revision" in your contract, you should bring this to her attention. If on the other hand, you have a broadly defined revision clause, then a major overhaul of your book is probably within their rights.

Another issue is copyright ownership of the newly-added material. The ownership of material added by

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the revision is less likely to become an issue if the amount of material added is small (i.e. a true revision). The issue becomes more complicated when a contract has an overly broad revision clause that permits a publisher to double the size of the work. But again, you must start with the contract - new material added to the book by a revising writer will either belong to the publisher (if the revision is a work made for hire/assignment) or the reviser (no work made for hire/assignment).

Your question also raises the issue of authorship credit. Some revision clauses are silent on the issue, while others give control to either the publisher or the author. Obviously, an author would want the contractual right to sole credit for his work, even if another author is hired to do a revision. In addition, look for a provision that permits you to withdraw your name if you don't like the book.

The final issue is how you and the revising author will be paid. The revision clause will provide (some more clearly than others) how the payment will be made to a person hired to revise the work in the event that you decline to do so. Some contracts provide for sharing of royalties (on a pro rata basis or by a simple split). Others provide that the publisher will deduct the "actual cost of preparing the revision" from the royalties due to the author. In the latter case, the revising writer is paid a simple fee that will probably have to be earned out.

After looking at your contract, you'll find that either your editor's plan is within the contract or it's not. If it's not, or the clause is ambiguous on any the substantial issues, you should contact your editor, your agent or your attorney to attempt to resolve the matter. If nothing else, be prepared to address these issues in your next negotiation.

Q: I wrote 20 short articles for a sports web site for which I was supposed to be paid \$100 each. Although I have had received repeated promises to pay, there is always an excuse. Now I'm being told that they're waiting for a new investor to provide additional capital. In the meantime, they want me to write more articles. Any advice on how to get paid?

A: My advice as one writer to another is not to write any more articles until you've been paid for the work already done. My advice as an attorney is to use aggressive collection methods and take advantage of whatever legal remedies you may have available. It sounds like they are on the brink of going under. If that's the case, you shouldn't wait another day.

Since the total amount due you is relatively modest, you may want to try small claims court. You could hire a collection agency or a lawyer. (Either will expect a substantial percentage of whatever they manage to collect). In the meantime, you would be wise to demand that they take your work down from the web site, indicating that without payment they don't have the right to have it up. If you haven't done so already, you should also register your copyright in the articles. This is essential.

I'm not optimistic about your chances of collecting. Many web sites start out with grand ambitions and inadequate financing. This sounds like it could be one of them. Good luck.

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Sallie is the author of **Author Law A – Z, A Desktop Guide to Writers' Rights and Responsibilities** by Sallie Randolph, Stacy Davis, Anthony Elia, and Karen Dustman, Capital Books, Inc. 2005

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Contract Dos and Don'ts

by Sallie Randolph

Sallie Randolph is an attorney who focuses on representing author clients. She is also a journalist and is a member of the Authors Guild, American Society of Journalists and Authors and other writers' organizations. Readers are reminded that this information is for general information only and that any specific legal problems should be discussed with an attorney

Do:

- Read your contract very, very carefully.
- Expect to negotiate. Be very skeptical of any “take it or leave it” offers.
- Use a businesslike approach to your negotiations.
- Take your time to carefully consider any contract. Ask for additional time if you need it.
- Be sure you understand what the contract means. Ask about anything you don't understand and seek competent help if you have any questions.
- Propose any changes you think are reasonable but be prepared to compromise if necessary.
- Have a book contract reviewed by an agent, attorney or organization such as the Authors Guild.
- See the contract clearly and read what's really there, not what you wish was there.
- Remember that a contract doesn't always have to be in writing.
- Recognize that if you haven't signed a written contract for a magazine or newspaper article, you've only granted one time rights to publish.
- Remember that the most effective way to negotiate is to pause when you're offered a deal. Silence can definitely be golden.

Don't:

- Sign anything you don't understand.
- Don't sign any contract that says “all rights” or “work made for hire” unless you understand clearly that you're giving up rights in your work.
- Rush – the person who seems to be in control of time has a distinct advantage in a negotiation. The offer isn't going to evaporate just because you want to consider it carefully.
- Make assumptions.
- Rely on verbal assurances. If it's important, get it in writing.
- Accept the first offer. A contract doesn't take effect until both parties have signed. Until then it's just an offer and any offer is subject to negotiation.
- Answer quickly when an offer is made. A pause is an effective negotiating tool and silence can be golden.

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The Inside Scoop on Literary Agents: What They Do and Don't Do.

The Unusual Phone Call

The Danger of the Wrong Agent

Ten Percent of Nothing, The Case of the Literary Agent From Hell by Jim Fisher

<http://amzn.to/2qF8v5q>

If you use a literary agent, you will

1. Work with a professional & Gain feedback
2. Learn from their market insight
3. Delegate the business aspects
4. Increase your income
5. Increase your productivity
6. Career management

A literary agent does not:

1. Write your book proposal or pitch
2. Guarantee success
3. Look out for your every interest
4. Always defend you

Some Resources

The Safest Way To Search For An Agent: <http://www.terrylinks.com/safest>

Checklist Of Questions To Ask An Agent: <http://www.terrylinks.com/agentques>

Where Do You Find An Agent? This resource includes over 400 names, addresses, emails and phone numbers of current Literary Agents: <http://www.terrylinks.com/agents>

How to Write A Great Query Letter by Noah Lukeman & *How To Land A Literary Agent* by Noah Lukeman <http://www.terrylinks.com/lukequery>

Author 101 Bestselling Secrets From Top Agents, The Insider's Guide to What Agents and Publishers Really Want by Rick Frishman & Robyn Freedman Spizman <http://amzn.to/2qyZ1cI>

How to Get A Literary Agent by Michael Larsen <http://amzn.to/2oXNIOd>

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Session 6 Platform Building Ideas for Every Author

What is a platform and why do I need one?

Free ebook on the topic: Platform-Building Ideas for Every Author: <http://www.terrylinks.com/pb>

The Value of Diversity and Ghostwriting

Ghostwriting or Writing As Told-to Books

You don't need to be famous to make a living with your writing. Many people do **one** of these types of books yet I've written many of these books. What's the secret?

Twenty Reasons to Become A Ghost

1. For the challenge
2. To extend your own knowledge
3. To hone your skills
4. To give yourself credit where it's due
5. To extend your credentials
6. For the money to live while you write your dream book
7. For the love of writing
8. For regular pay up to an extraordinary income
9. To have flexibility in your career
10. For the satisfaction of ultimately being your own boss with your own business
11. For the pleasure of writing about exotic people
12. To chronicle the history makers of yesterday, today and tomorrow
13. To promote the personalities you respect and admire
14. To change the image of something or someone who's received bad press.
15. To promote products, causes, charities, businesses or personal vendettas
16. To right a wrong; to clarify or promote a timely issue
17. To record a family history or detail a dynasty
18. To keep your own privacy
19. To extend your marketability
20. Just for the fun of it.

--With thanks to Eva Shaw, author of *Ghostwriting: How To Get Into The Business*.

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Time for Self-Examination

- “We” instead of “Me”
- Consider the strength of your relational/ people skills
- Control or cooperation?
- What is your motivation?
- service or \$\$\$

Let's Define Some Terms

- ghostwriter
- collaborator
- co-author -- with OR and

Opportunities Are Everywhere -- If You Create Them

- Magazine articles lead to collaboration
- Contacts lead to collaboration
- Publishers need collaborators
- Work for Hire can lead to additional collaboration

Managing Expectations and Handling the Business Aspects

- Contracts and determination of responsibilities

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Session 7 How to be proactive in promotion but not high maintenance

With thousands of new books entering the market each year, authors can't sit back and expect their publisher to be the only means to sell their book. Publishers are looking for authors who understand the necessity of book promotion and actively pursue new opportunities.

Nine Common Mistakes That Authors Make (and How to Avoid Them)

1. You get involved too late in the marketing planning. Every publishing house has a sense of where any book ranks on its list by four to six months before publication. Find out what your publisher is thinking and get to work.
2. You are polite to your editor, but you condescend to the editorial assistant. The assistants are the grease that keeps your wheels moving—never forget that.
3. You assume that what's printed in the catalog is the final marketing plan for the book. The campaign evolves dramatically as the publication date appears—for better or for worse. Stay involved to make sure it's for the better.
4. You wait too long to hear from the publicist. Don't wait. Because publicists are so overloaded, you might never get the call. If you're not sure of the right time to call, ask your editor.
5. You declare in your first meeting with your publishing team or publicist that you are planning to hire your own freelance publicist. Before you show your hand, explore the publisher's willingness to contribute toward paying a freelancer, particularly if it becomes clear that the house's plans don't meet your expectations, or your publicist is either incompetent or swamped with too many projects to do an effective job.
6. You forget to fill out the author questionnaire and lose the opportunity to position the book and present marketing ideas. If you're not writing a marketing plan, then fill out this questionnaire. If your editor forgets to give you one, then ask for a copy.
7. You don't bother having a decent author photograph taken. A poor photo is a lost marketing opportunity.
8. You behave like a big pain in the butt. Complaining about your campaign, gossiping about the publishing staff, and other passive-aggressive behaviors will alienate you from the publishing team.
9. You forget to say thank you for every little thing that someone at your publishing house does for you.

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www.publicizeyourbook.com

Seven Questions Not to Ask Your Publicist

By Lissa Warren

A savvy author is going to have a lot of questions about the publicity for his or her book. Yet there are some questions that are notorious for riling publicists. I list a few below, and reasons to avoid them. I encourage you to think of them as the seven deadly sins.

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1. “Have you tried Oprah? (or Larry King, Charlie Rose, Regis and Kelly, or Terry Gross)?” Publicists know that these shows really sell books, and go for them before anything else if you and your book are even remotely appropriate. They’re already under a lot of pressure to get you on these programs. They won’t appreciate more.
2. “Could you overnight a copy to...?” You’re asking your publicist to stop what she’s doing (perhaps preparing for a big marketing meeting where she’ll discuss your book) and send a copy by the costliest means possible. If it’s a major show or publication and they’ve expressed real and urgent interest, by all means ask for this. Otherwise, just email the info to your publicist and ask her to mail the book or send it via UPS Ground as soon as possible.
3. “Anything new?” If there were, your publicist would have told you; we’re not shy about trumpeting success. Keep in mind that your publicist constantly hears this same question from her immediate supervisor, the Publisher, the sales reps, the foreign rights department, the subrights department, and the editors. Then multiply the pestering by ten for the number of books she’s working on, in some capacity, on any given day.
4. “Did the host/reporter who just interviewed me even read the book?” Unfortunately, the answer is, probably not. But please don’t be offended. They may be even busier than your publicist. That’s why she sent them press material to crib from.
5. “Is (insert name of show or publication) going to do anything with my book?” Your publicist will do her best to get a “yes” or “no” from each media outlet about your book, but she isn’t always able to, and pushing the media for an answer when they haven’t responded to a galley, a finished book, two emails, a fax, and three voice mail messages isn’t going to help her reputation—or yours. Sometimes, no answer is an answer—if they were interested, they’d have called. Also keep in mind that when she does get a “no,” your publicist might not get a reason or the reason may be vague (“it’s just not right for our magazine,” or “the host wasn’t interested.”). This is frustrating, but perfectly normal.
6. “Could you send a copy to my friend Mandy from high school? She knows Katie Couric’s assistant.” It’s nice that your friend knows Katie Couric’s assistant. However, your publicist probably knows Andrea Smith, the books producer at the “Today Show” (who has been on the list of publishing’s most powerful people) and the person there who is most likely to actually do something with your book—and chances are your publicist has sent your book to her. Remember, your publicist only has so many copies to send to the media. You don’t want her to waste one, and insisting that she send one to acquaintances of yours who have distant connections to the media is a sure way to do so. However, if you yourself have a direct connection to the media (e.g. your friend Mandy from high school is Katie Couric’s assistant—or better yet, your friend from high school is Katie Couric), then by all means ask your publicist to send. She’ll be grateful.
7. “How many other books are you working on right now?” More than you want to know about. Trust me.

Lissa Warren is the author of *The Savvy Author's Guide to Book Publicity* (Carroll and Graf, 2004) from which this material was reprinted, and is Senior Director of Publicity at Da Capo Press—a member of the Perseus Books Group. She teaches a graduate course in book publicity at Boston's Emerson

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College. <http://amzn.to/2p60THN>

Great Promotional Resources for Every Author

Every author who wants to sell books should get the following books—and don't just purchase them but read them, highlight them, follow the advice and re-read them.

1. *Publicize Your Book!, An Insider's Guide to Getting Your Book the Attention It Deserves* by Jacqueline Deval (Perigee) 2008. \$15.95 <http://amzn.to/2qFXXaV>

Currently, the publisher at Hearst Books in New York, Jacqueline Deval has been a director of publicity for several publishing houses. She tells authors the inside scoop about how to effectively work with a publisher or on your own to generate publicity, be an asset to your publicist and get your book noticed. The book is loaded with invaluable information from someone who has paid her dues and worked on the inside of publishers. Catch her excerpts and endorsements on her website:

www.publicizeyourbook.com

2. *Guerrilla Marketing For Writers, 100 Weapons to Help You Sell Your Work*

by Jay Levinson, Rick Frishman, Michael Larsen and David Hancoc (Morgan James Publishing) 2010, \$19.95 <http://snipurl.com/Guerilla>

The battle begin before your book even hits the shelves, and you need every weapon to get ahead of the competition. *Guerrilla Marketing for Writers* puts an entire arsenal at your disposal. Packed with proven insights and advice, it details 100 "Classified Secrets" that will help to sell your work before and after it's published. This wide range of weapons-practical low cost and no-cost marketing techniques will help you design a powerful strategy for strengthening your proposal, promoting your books and maximizing your sales. Each "weapon" is rated by its monetary cost to the author, and well over half are free. While the authors advise that this book will help in the promotion of "any kind of book, from poetry to textbooks," most of its tactics seem best suited to nonfiction. The authors' overarching philosophy? Think like an entrepreneur.

About The Authors: Jay Conrad Levinson is the creator of the best-selling "guerrilla" marketing series, is the president and founder of a marketing and consulting firm, and lectures nationally to major companies, professional organizations and universities. Rick Frishman is the founder of Media Connect. He is one of the leading authorities on book promotions and is one of most sought-after lecturers. Michael Larsen runs the oldest literary agency in the west. David Hancock is the founder of Morgan James Publishing.

3. *The Frugal Book Promoter, How to Do What Your Publisher Won't* by Carolyn Howard-Johnson, (Star Publish) 2004, \$17.95 <http://amzn.to/2pIihGO>

Unsure if you can afford to promote your book. According to this author, you can't afford not to promote. A seasoned professional, Howard-Johnson covers many cost effective ways to promote books. A former publicist, this author provides no-nonsense basics. Pick and choose from dozens of ideas for promotions to match your personality and pocketbook.

4. *You Can Market Your Book* by Carmen Leal. (Write Now Publications) May 2003, \$15.00.

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You Can Market Your Book is designed to help you understand basic book marketing principles. No matter how your book was published, unless you are a superstar author, you are the main salesperson. Yes, you might be responsible for the distribution and you might even have a publicist for a brief time, but ultimately it's up to the author. You need to be as aggressive as possible if you want to reclaim your garage or closets from the boxes of unsold books, or if you expect a royalty check from your publisher.

<http://amzn.to/2pxpKHS>

5. *Jump Start Your Book Sales A Money-Making Guide for Authors, Independent Publishers and Small Presses* by Marilyn and Tom Ross. (Writer's Digest Books) 1999. \$19.95 <http://amzn.to/2pI9Ueg>

Turn yourself into a marketing master and make tens of thousands of extra dollars with the ideas in this one-of-a-kind resource. Get your books into catalogs, rack up lucrative bulk premium sales, and do author signings and radio interviews that get outrageous results. Find the secret to generating tons of free publicity, then discover how to *capitalize* on it.

6. *1001 Ways To Market Your Books, For Authors & Publishers, 6th Edition* by John Kremer, Open Horizons, 2006, \$27.95. <http://amzn.to/2qFw1iD>

Over 700 pages in this completely revised book which is comprehensive and loaded with practical advice on every page.

About The Author W. TERRY WHALIN



W. Terry Whalin understands both sides of the editorial desk--as an editor and a writer. He worked as a magazine editor and his magazine work has appeared in more than 50 publications. A former book acquisitions editor for several publishers and a former literary agent, Terry is an acquisitions editor at [Morgan James Publishing](#). He has written more than 60 books through traditional publishers in a wide range of topics from children's books to biographies to co-authored books. Several of Terry's books have sold over 100,000 copies. Whether you are unsure how to start on the path to publication or want to take your publishing career to the next level, Terry's newest book, [JUMPSTART YOUR PUBLISHING DREAMS, INSIDER SECRETS TO SKYROCKET YOUR SUCCESS](#) is packed with insight. Terry is a popular speaker and teacher at numerous writers' conferences and an active member of the [American Society of Journalists and Authors](#).