



Leyendecker & Lemire, LLC

An Intellectual Property and Business Law Firm



ENTERTAINMENT LAW

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Tips for Authors and Publishing Contracts

One of the most exciting times in an author's life is when she get her first book deal. The excitement of getting a deal after all of her years of hard work can be almost overwhelming. However, after securing an offer from a publisher there is a lot of work to be done - specifically, negotiating the publishing contract. Many authors do not like this part of the process because it is all business and involves little creativity. However, you should stay interested and involved in this process because it is one of the most important things for you as an author and can have monumental consequences. The publishing contract will determine a multitude of things including who owns the copyrights, what will your royalties be, how subsidiary rights will be handled, the size of the advance, when royalties will be paid, what happens with the movie rights, and more.

The following are some significant issues with publishing contracts:

1. **Have an attorney review the contract:**

An attorney should review all significant contracts before you sign them and it is especially important to have publishing contracts reviewed. The provisions in a publishing contract may seem fairly straightforward and simple but they can be deceptively complex. Subtle phrasings of words that may not seem like a big deal can drastically impact your legal rights. We have negotiated numerous publishing contracts on behalf of our clients. We know what to look for and which provisions

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need to be in the contract to ensure that it is a good deal for our clients.

2. Do not accept the contract as given to you:

While it is true that a first time author may not have huge bargaining power in negotiating his contract, that doesn't mean that he should just accept the contract as given to him by the publishing company. The first draft of a publishing contract is guaranteed to be slanted in the publishing company's favor. Our job is to identify the areas that are important to you, spot the clauses that are unfairly biased in favor of the publishing company, and work towards a middle ground to strike a deal that is beneficial to you. Most of the time, the publishing company will be open to negotiating a fair and reasonable contract that makes both sides happy.

3. Pay special attention to the grant of rights provisions:

This section may be the most important part of the contract and is often overlooked. What rights are you granting the publisher? How long do they last? Do you retain any rights?

4. Out of Print / Right Reversion Clause

These types of clauses are important because they set the circumstances under which you get your book back. You may be able to take your work to another publisher or even self publish. We want to avoid a situation where the publisher shelves your book and leaves you no ability to shop it around to other publishers.

5. Subsidiary Rights

Subsidiary rights include all the other uses for your manuscript other than hard bound or paperback versions of the book. They include books on tape, magazine articles, movie rights, television rights, merchandising and electronic rights, to name a few. You will want to



retain as many of these rights as possible. However, granting a lot of these rights to the publisher is a reality in today's market. The important things are maximizing your royalty on these items and ensuring that the royalty is immediately passed on to you.

6. Advance

Trust us - advances do exist for first time authors. The key is to get as large of an advance as you can and to have it paid out in the shortest amount of time possible.

7. Royalties

There are industry standards for royalty rates. Be sure that all of the royalty rates are within the industry standard range. Be wary of a publisher who offers a great rate on hard and soft cover editions but offers a really low subsidiary right royalty. These days, the subsidiary rights can be exponentially more valuable for the author than the actual publishing of the book. Also, the basis of the royalties is an important factor. The number the royalty is based on could translate into a serious difference in your income.

8. Publication

This may not seem obvious, but it is crucial that the publisher be obligated to publish the book. Additionally, you want to have particular provisions that lay out a specific publishing timeline. This should prevent your book from landing in an indefinite publishing limbo.

9. Copyrights

The copyrights should be in your name. You want to make sure that copyrights for the published edition are registered within three months of the publication date.



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10. Payments and auditing

Make sure that you have the right to audit the publisher's books and records to ensure that the royalty payments are accurate and correct. The more often the better, but you want once a year at a minimum. You also want to see how royalty payments are structured. (You will want more frequent payments while the publisher will want less frequent payments). Also, do payments come regularly or do you have to reach certain limits before royalties are paid out?

Leyendecker & Lemire, LLC is a Denver-based law firm offering a full spectrum of Intellectual Property, Business and Entertainment related legal services for entrepreneurs, individual inventors, and businesses of all sizes. We pride ourselves in providing large firm quality, but with personalized service and attention the large firms do not provide to their smaller clients. Our strength is working with a client from the beginning of his/her venture to maximize the venture's value and potential, as well as, help minimize the risk of legal disputes. Call (303) 768-0123 or e-mail us at info@coloradoiplaw.com today to see how we can help you!

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