Anatomy of an Author Agreement

AN AGENT DECIPHERS THE MOST IMPORTANT CLAUSES IN A PUBLISHING CONTRACT.

by Julie Barer

We asked agent Julie Barer, who founded Barer Literary in 2004 and represents clients such as Joshua Ferris, Gina Ochsner, Kevin Wilson, and Zoë Ferraris, to explain the nuances of several essential clauses included in a standard publishing contract. While few authors want to imagine potential conflicts when embarking on an often long-awaited partnership with a publisher, problems can arise. It is an agent's job to foresee such possibilities, to make sure not only that the author's best interests are taken into account and that the author is protected in the worst-case scenarios, but also that the author is given the opportunity to play a major role in the way her book is published.

Barer focuses on the following seven clauses; she stresses, though, that every clause in a publishing contract is important, and she recommends that authors never sign a contract without the consultation of an agent or a lawyer with publishing experience.

TERMS FOR DELIVERY AND ACCEPTANCE
Along with stating the date by which you are obligated to turn in your manuscript and enumerating any additional materials that must accompany it, this clause addresses what happens if you fail to deliver your manuscript on time, or if the publisher deems it unacceptable. (Most advances are divided into three or four payments, at least one of which is dependent upon the publisher's accepting the delivered manuscript.)

Pursuant to this clause, an agent can negotiate the amount of time an editor may take to respond to your manuscript. An agent can also negotiate the amount of time you must be given to revise the work if the publisher finds it unacceptable (anywhere from thirty to ninety days) and the amount of information the publisher must give you about why it is rejecting it, as well as the grounds on which it can contractually reject it. Most important, an agent can negotiate how much of your advance you must repay, and in what time frame, should the manuscript be rejected. This clause also outlines what happens if the publisher determines that your book requires a legal read for possible liability issues, including who pays for the legal read, what changes you may be asked to make and in how much time, and what your options are should you choose not to make those changes.

COMPETITIVE WORKS
This clause specifies when you can publish your next book and what kind of book is considered competitive with the publisher's edition. An agent can make sure any performance rights and editions (such as screenplays or television scripts) as well as prequels and sequels are protected. (This is also addressed in the Reserved Rights clause, where an agent can outline all the rights held by the author.)
ROYALTIES
In addition to outlining the advance and how it will be paid (in halves, thirds, or quarters), this clause addresses royalty rates. Royalty rates are the percentages you receive on every sale of your book, and they change depending on the type of sale and edition of the book. While many people know what the standard royalties are for hardcover, paperback, and mass-market editions, your agent also will know the going (and often changing) rates for every other edition of your book, including audio and electronic editions. She will also know the rates for sales such as foreign; high-discount sales to outlets where the bookseller receives a higher-than-standard discount from the publisher; premium; proprietary editions; and mail order. Your agent can negotiate the rates that pertain to each of these editions to reflect not only the industry standard or preferred rates for best-selling authors, but also any special markets and opportunities that might be available for your book.

SUBSIDIARY RIGHTS
This clause outlines the rights your publisher is allowed to license to others and what your monetary share of those licenses should be. It addresses first and second serial rights, audio rights, translation rights, book-club rights, the right to reprint excerpts of your work, rights to electronic editions and versions (two different things), performance rights, and merchandising rights. In negotiating these rights, an agent can ensure that you have approval or consultation on the licensing of these various editions and editorial approval over abridgements or adaptations of your text in certain editions.

OUT OF PRINT
This clause defines the term "out of print." It specifies how many years must go by after publication before a book can be considered out of print, and through which channels and in which formats a book must be made available in order to be considered "in print." An agent can negotiate the specificity of this definition as it applies not just to the availability of printed editions, but also to the number of electronic editions that must be sold over a certain period of time in order for the "in print" definition to be fulfilled, as well as what steps you can take when you find your book unavailable in the marketplace and which rights you can have reverted back to you. An agent can make sure you are entitled to purchase the typeset book "plates" of the book at a discounted cost from the publisher in order to make reselling or licensing those rights to another publisher easier.