Lawyers For The Talent

by

Richard Dooling

Chapter 1

Book Contracts

Source Materials

- Authors Guild Model Trade Book Contract and Guide (sent to authors or their representatives when they join the Authors Guild; used by many professionals in the publishing industry).
- Authors Guild: Improving Your Book Contract - Negotiation Tips For Nine Typical Clauses.
- *A Writer's Guide To Contract Negotiations*, by Richard Balkin, Writers Digest Books, 1985.
- *Negotiating A Book Contract,* by Mark L. Levine, Asphodel Press, 2009.

Introduction

Most basic book contracts feature a dozen or so clauses dealing with familiar topics like:

- the Author's granting of certain rights to the publisher;
- the Author's delivery of a "satisfactory" manuscript to the publisher at an agreed upon date;
- the payment of royalties;
- the payment of advances against royalties;
- the use of the Author's name and likeness to sell books, and
- the licensing of subsidiary rights.

These clauses proceed in a familiar pattern, beginning with the granting of rights, and payment of the advance, and ending with unpleasant topics like:

- the "Out of Print" provision,

- lawsuits for infringement, and
- the agency clause (which provides that all contract payments are made to literary agents, who take their 15% commissions, and send the rest to their authors).

Standard Publishing Agreements

Large mainstream publishers use pretty standard contract provisions that lawyers, agents, publishers, and accountants have haggled over for decades. A reputable publisher is unlikely to send an author or agent a proposed contract containing outrageously unfair contract provisions.

Paradoxically, small publishers are more likely to have boilerplate contracts with dangerous or unfair contract language, not because small publishers overreach or are out to screw authors, but because smaller publishers often can't afford legal representation any more than the authors they are publishing. A small publisher may be using an outdated or one-sided contract downloaded from the Internet or drafted years ago by a lawyer with little or no publishing industry experience. The contracts are often not models of clarity and may not be updated to deal with the current state of electronic rights. Also, smaller publishers frequently deal with unrepresented authors, so the temptation is to take as many rights as possible from the unsuspecting author.

Representation & Book Contracts

Agents & Book Contracts

Most authors who go the standard publishing industry route (as opposed to self-publishing) usually solicit literary agents, who then help authors place their manuscripts with publishers and negotiate the terms of book contracts.

Literary agents "handle" book contracts for their author clients the way real estate agents "handle" real estate purchase agreements for homeowners and home buyers. Literary agents swear that they do not provide legal advice about book contract provisions (to avoid violating the admittedly vague rules in all fifty states against the unauthorized practice of law)(UPL), but agents do provide advice, often better real-world advice than an author could get from a lawyer with or without publishing experience.

Lawyers & Book Contracts

Most agents will insist that the authors they represent do NOT need lawyers to review book contracts. They are probably right. And every agent can tell the tale of a lawyer who got in the way of making a great book deal because the lawyer knew nothing about the customs and mores of the publishing industries.

A general practice lawyer in Dubuque, Iowa attempting to vet a publishing contract won't fare much better than a Wall Street lawyer trying his hand at water rights in the Sand Hills of Nebraska. In other words, it takes industry experience just to know what is and is not customarily negotiable.

Agent Richard Balkin described it this way:

> There is no need to be daunted or intimidated by the printed word in contracts, for most authors and all agents make many changes on the boilerplate. Still, the problem for the initiate is not only which changes to make, but which changes *can be made*. That is, you want to know which clauses and provisions editors are willing to haggle over and which terms reflect fixed house policy or are so taken for granted by those in the industry that a writer's request to change them will be met with great resistance or complete inflexibility.
>
> *A Writer's Guide To Contract Negotiations*, by Richard Balkin, Writers Digest Books, 1985.

However, once Hollywood or foreign publishers get involved, many agents welcome the assistance of a good entertainment lawyer or publishing lawyer. The deals for movie rights and international rights can be very complex, and there is always at least the possibility that the author of the novel may be invited to take a crack at writing the first draft of the screenplay. At a minimum, the author with a Hollywood deal needs the assistance of a Hollywood agent. Most literary agents have a relationship with one or more agents in Hollywood who specialize in placing literary properties with studios and production companies.

As a rule, first-time authors either get lucky and "get an agent," or they must fend for themselves by self-publishing or by dealing with small or academic publishers.

The Authors Guild

Despite its name, the Authors Guild is more an "association" than a true union or guild. It describes its mission this way:

> The Authors Guild has been the nation's leading advocate for writers' interests in effective copyright protection, fair contracts and free

expression since it was founded as the Authors League of America in 1912. It provides legal assistance and a broad range of web services to its members.

Membership Eligibility

There are three categories of membership in the Guild. The particulars of these requirements are spelled out at the Authors Guild Membership Eligibility Page; a short summary follows.

1. **Regular Membership:** For authors published by "an established U.S. book publisher," for writers published by "periodicals of general circulation in the U.S.," or authors and writers who have earned "writing income" (including from self-published works) of at least $5,000 in an 18-month period.

2. **Associate Membership:** For authors who have been "offered a contract with an established American book publisher, if an established literary agency has offered to represent you, or if you have earned at least $500 in writing income (including self-published writing income) as a book author or freelance writer in the 18 months prior to applying for membership."

3. **Membership-at-Large:** is a non-voting membership category available to:

    - Heirs, trustees, or executors representing the estate of a deceased author whose literary work would have qualified the author for Regular membership.
    - Literary agents who have placed work with established American publishers.
    - Attorneys and accountants who represent authors.

Dues: First year dues are $90. (After the first year, dues are charged on a sliding scale, depending on your writing income. Most members continue to pay $90.) Application Form.

Contract Reviews

The Authors Guild offers free contract reviews for authors or their representatives and free assistance during contract negotiations. The Guild recommends a three-step process. First, the author or representative should join the guild and obtain a free (for members) copy of the Authors Guild Model Book Contract. Then the Guild will provide a written contract review, and also help with tips during contract negotiations.

If you are an author or novelist (or someone trying to provide legal advice to one), you may both receive invaluable assistance from the Authors Guild.

Important Book Contract Provisions

The Grant of Rights

Two Fair Examples

> The Author grants to Publisher, during the full term of copyright available to the Work in each country covered by this Agreement, the exclusive right to print, publish, distribute, sell and license any and all editions and/or formats of the Work, in whole or in part, throughout the United States of America, its territories and possessions, the Philippines, and Canada and the non-exclusive right to do so throughout the rest of the world with the exception of the countries listed on Schedule A hereto (the "Territory") for the full term of copyright available to the Work in the Territory.
>
> The Author grants to the Publisher the exclusive right to publish, reproduce and distribute the Work in the English language and to exercise and grant to third parties the rights to the Work described in Paragaph 6 (the sub rights provisions) throughout the United States and its territories, Canada and the Philippines.

An Unfair Example

> The Author hereby grants and assigns to the Publisher for the legal term of copyright (including any renewals, extensions, reversions and continuations thereof) all rights and interests in the Work and any new or revised, adapted or abridged editions thereof, including without limitation the exclusive rights, by itself and/or with others, to print, publish, republish, transmit, display, sell and distribute the Work and to prepare, publish and distribute derivative works based thereon, in all languages throughout the world, in any form or media of expression whatsoever now known or hereafter developed or invented (including without limitation any form of electronic publication distribution or transmission that the Publisher may wish); and to license such rights to others as set forth in Schedule II on such terms as the Publisher may determine.

> The copyright in the Work will belong to the Publisher. The Publisher will cause the copyright notice authorized by U.S. copyright law to be imprinted in each copy of the Work issued by it. The grant in Paragraph 1.1 above includes a grant to the Publisher of the right to secure registration of copyright in the Work in the Publisher's name or any other name the Publisher elects in such countries as the Publisher may deem expedient; the Author agrees to take all steps necessary to effect such registration or any renewal thereof. The Author agrees to execute and deliver to the Publisher any and all documents in proper or customary form necessary or helpful to record in the United States or other copyright office the Publisher's ownership of the copyright in the Work.

Notes on Grant of Rights

The grant of rights clause transfers ownership rights in, and therefore control over, certain parts of the work from the author to the publisher.

Red flags are terms like "all rights" or "world rights". Worse is an actual transfer of the copyright, which we see in the bad example above. Notice how in the good examples above the language clearly grants only the right to "print, publish, reproduce, distribute" and the like. By specifying each right separately the author makes it clear that other rights (for instance film rights, audio book rights, or ebook rights) will all be handled separately.

In keeping with our analogy of a bundle of rights being much like a bundle of sticks, the author and his representatives should sell each right separately. Never the whole bundle. One stick at a time, and for each stick limit the languages, territories, and formats being granted, which means that the grant or license for each right should include the following:

- The territory (country or countries) or the geographical area where the Publisher may exercise the rights granted;
- The time period; how long may the Publisher exercise these rights?
- The language (English, Spanish, German, Japanese …)
- Is the right exclusive or nonexclusive? In other words may the author also sell the right to publish English language editions in the United Kingdom to more than one publisher?

Territories, language, and exclusivity are usually expressed in the grant itself. The time period usually says "for the full term of the copyright available to the Work," but in fact this period of time is usually limited by the "Out of Print" provisions described below.

In the bad example above, the publisher makes a land grab for the copyright itself. **Don't assign or transfer the copyright itself.** Never transfer or assign "copyright," "ownership of copyright" or "all rights."

Of course, it's necessary to grant some exclusive rights (that's what you are selling) but care must be taken in granting rights in languages other than English and territories other than North America. If this is a small press, are they really set up to exploit those rights? Or will they just end up owning them and sitting on them?

Delivery of the Manuscript

Here the author promises to deliver a manuscript containing a specified number of words, for example: 80,000 words; or a range: 90,000 to 110,000 word. Not pages. These clauses may also include a general description of the manuscript (fiction or nonfiction) and general tone or genre.

If there are maps, photos, illustrations and the like, a description of these should also be included here, as well as who pays to obtain and prepare them (usually the author pays). Also, in the case of a nonfiction book, the publisher may require that the author prepare an index, or pay the publisher to have one prepared. These can be expensive, often a few hundred dollars or more.

Satisfactory Manuscript

Most publishing contracts will contain a clause specifying that "the manuscript must be satisfactory to the publisher in form and content." The Authors Guild recommends that authors or their representatives try to change this language from "satisfactory" to a "complete manuscript," or use objective standards such as: "professional" or "fit for publication" or "of publishable quality." If the publisher is not "satisfied" with the manuscript, rejects it, and asks for return of the advance, objective standards may allow the author to prove that she had performed under the contract, because another publisher is willing to publish, meaning that the manuscript was "professional" and "fit for publication."

There is no sense fighting over whether to include a satisfactory manuscript clause, because the real issue is what happens if the publisher no longer wishes to publish the book. The editor who bought it may have died or moved to another house. The market for that type of book may have vanished after the publisher made its deal with the author. The simple solution is to include provisions that deal with the following:

1. A time certain for the publisher to accept or reject the manuscript after it is submitted. Thirty (30) days seems fair.

2. If the publisher wants changes, how will those be communicated to the author? (Written notes are best.) And how long does the author have to address any shortcomings? (Two months or 60 days is fair.)
3. Spell out the publisher's obligation to assist the author in editing a second corrected draft before ultimately rejecting the manuscript.
4. If the publisher is still not satisfied after the author has attempted to address shortcomings in the manuscript and the publisher no longer wishes to publish, then what about the monies already advanced?
5. If the author goes elsewhere and obtains a publishing deal, must the author pay back the monies advanced by the first unsatisfied publisher?

The Authors Guild would like to see non-refundable advance or a clause which allows the author to repay the advance on a rejected book from re-sale proceeds paid by a second publisher.

If the publisher balks at that suggestion, a fair disposition of monies paid out by a publisher who no longer wishes to publish the manuscript might go something like this:

> If the Work is rejected for any of the reasons set forth above, the Author may retain fifty percent (50%) of any amounts advanced to the Author pursuant to this contract and shall repay the publisher fifty percent (50%) of any amounts advanced within twelve (12) months.

Typically after such rejection, the author will be entitled to sell the manuscript to another publisher. If she's lucky in getting another publisher to buy the manuscript, then she may be required to repay the other fifty percent (50%) of the monies advanced by publisher one.

Publication

Many authors are so excited about getting a book deal, they never consider that the publisher may not actually publish the book, even after paying for it. The publisher's list may become crowded, or political or financial events may make the book not so desirable. Sometimes the publisher just keeps "pushing" the book into the next season, while the author waits and waits.

Every publishing contract should specify a date certain or a time period during which the publisher must publish the book (eighteen (18) months after submission of the final manuscript seems fair). After that time, the author should be free to end the contract, regain all rights granted, and keep the advance.

Definiteness

Pinnacle Books v. Harlequin,

United States District Court SDNY (1981).

- Case on Westlaw 519 F.Supp 118 (SDNY 1981)(5 pages).

In 1976, Pinnacle Books entered into a contract with Pendleton for the rights to publish books 29 through 38 in *The Executioner* series. Since 1969, Pendleton had written and Pinnacle had published 38 different action/adventure books in *The Executioner* series. Author Pendleton owned copyright in the series, which had sold approximately 20 million copies.

The agreement provided that:

> Pendleton would not offer rights in the series to any other publisher until, **after extending their best efforts**, the parties were unable to agree on terms for a new contract."

In 1978-79, Pendleton and Pinnacle began negotiating for an extension of their agreement, when a dispute broke out over foreign royalties. It was settled eventually, and according to Pinnacle negotiations became more intense, but their differences could have been resolved if the parties had continued using **their best efforts.**

But in January 1980, Harlequin Books began negotiating with Pendleton for rights to *The Executioner* series.

On May 15, 1980, Pendleton signed with Harlequin.

Pinnacle sued Harlequin and sought an injunction and damages against Harlequin for unlawful interference with the contractual relationship between Pinnacle and Don Pendleton (its most successful author).

Now, for Pinnacle to succeed for unlawful interference with a contract, Pinnacle had to prove up a VALID contract. Pinnacle argued that it had an agreement with Pendleton that he would use **best efforts** to agree on new contract terms.

Indeed if Pendleton had not negotiated at all, perhaps Pinnacle would have a good argument, but how is the court supposed to enforce a contract provision that says the parties must use their **best efforts?**

The court said:

> where the parties agreed only to negotiate and failed to state the standards by which their negotiation efforts were to be measured, it is impossible to determine whether Pinnacle used their "best efforts" to negotiate a new agreement.

> There simply is no objective standard by which the court can determine whether Pinnacle's offer constituted its best efforts; nor can it decide whether Pendleton's participation in negotiations with Pinnacle for over a year were his best efforts. In short, the option clause is unenforceable due to the indefiniteness of its terms . . .
>
> "Best efforts" or similar clauses, like any other contractual agreement, must set forth in definite and certain terms every material element of the contemplated bargain. It is hornbook law that courts cannot and will not supply the material terms of a contract. Essential to the enforcement of a "best efforts" clause is a clear set of guidelines against which the parties' "best efforts" may be measured.

What Pinnacle really needed (and apparently was unable to bargain for) was an "option clause."

Authors Guild on Option Clauses

To the Authors Guild, Option clauses are "Unacceptable Provisions."

A typical option clause looks like this:

> The Author grants Publisher the exclusive option to acquire the rights to the next full-length work of [fiction or non-fiction] to be written by the Author. Publisher shall be entitled to a period of sixty (60) days after submission of the next work in which to make an offer for that work, during which time the Author agrees not to solicit any third party offers, directly or indirectly.
>
> *See* Dooling Book Contract at paragraph 19.

As the Authors Guild puts it: These clauses favor PUBLISHERS ONLY, not authors. An option clause gives your publisher the PRIVILEGE to publish your next book (but only if they want to).

An book contract option clause binds the author to the publisher, even if the relationship has been unsatisfactory. The clause usually contains some or all of the terms you MUST accept for the optioned work. Even "first refusal" clauses and "agreements to agree" impede the author's freedom. Some publishers will simply delete option clauses. Consider asking for an editor's clause instead?

What if your editor leaves? What if you get a better deal elsewhere? You may not want a provision hanging over your head that you MUST show your next book to your current publisher first.

If you cannot get rid of the clause, limit it: Avoid options on "the same terms" and "last refusal rights" (allowing publisher to match terms the author

has received). Go for a "limited time right of first refusal" on terms "to be mutually agreed upon."

Also limit the clause to a summary or proposal for the next book (not entire manuscript). Otherwise you may be unable to shop a query, proposal, or summary to another publisher until you finish the second book and show it to your original publisher.

Limit the time. And don't let the publisher require publication of the first work. Limit option only to similar books (fiction, non-fiction, poetry).

See Dooling Book Contract at ¶ 19.

How Book Advances Work

The author signs a book contract and agrees to a standard 15% royalty with a $120,000 advance payable as follows:

- 1/3 ($40k) on signing.
- 1/3 ($40k) on delivery of manuscript.
- 1/3 ($40k) on publication.

These payments go to the author's literary agent, who deducts her 15% and sends the rest to the author (or if a lawyer is involved, perhaps another 5% for her).

On the entire $120,000, the literary agent would take 15% ($18,000). If an entertainment or publishing lawyer represents the author in the deal, another 5% ($6,000) comes out for legal fees. Like agents, talent and publishing lawyers are often paid a certain percentage of any publishing or movie deals made on behalf of their clients.

The book gets published and the cover price is $20, so every book sold gets your client $3.00 (15% of $20).

Let's say the book sells 50,000 copies:

- $3.00 x $50,000 = $150,000 gross royalties
- $150,000 - $120,000 (advance) = $30,000.

On next royalty statement, your client will earn $30,000, the literary agent will take $4,500 and the lawyer will take $1,500. ### Option Clauses

A Sample Option Clause

> The Author agrees to submit the manuscript for the Author's next book-length work to the Publisher before showing it to any other publisher, and the Publisher shall thereupon have 30 days to advise the Author whether it wishes to publish the said work and upon what

terms. If the Publisher fails to so advise the Author within the specified period, or if the Publisher wishes to publish the said work but is unable within 30 days of its so advising the Author to reach agreement with the Author as to the terms of publication, the Author shall be free to submit said work elsewhere, provided that in the case of failure to reach agreement as to terms, the Author shall, prior to the acceptance of a bona fide offer from any third-party, submit the financial terms thereof to the publisher in writing, whereupon the Publisher shall have three working days to advise the Author that it will publish the said work on such financial terms in which event a contract will be entered incorporating all such terms and the other terms and conditions provided for herein. The provisions of this Paragraph shall survive the termination of this Agreement.

A Writers Guide To Contract Negotiations, by Richard Balkin

Another Sample Option Clause

The Author grants Publisher the exclusive option to acquire the same rights as have been granted in this Agreement to the next full-length work of non-fiction (excluding poetry) to be written by the Author. Publisher shall be entitled to a period of 60 days after submission of the manuscript of the next work in which to make an offer for that work, during which time the Author agrees not to solicit any third party offers, directly or indirectly. If Publisher wishes to acquire the next work, the Author and Publisher will attempt to reach an agreement as to terms during a reasonable period of exclusive negotiation. If they cannot reach an agreement as to terms during a reasonable period of exclusive negotiation. If they cannot reach an agreement, the Author shall be free to submit the manuscript for said next work elsewhere, but the Author may not accept an offer from any other publisher on terms equal to or less favorable than those offered by Publisher. Publisher shall not be required to consider the Author's next work until publication of the Work which is the subject of this Agreement. The Publisher option shall also apply to the next book-length work of non-fiction by each party to this Agreement included in the term "Author," whether such manuscript is written alone or together with another co-author.

Authors Guild on Option Clauses

To the Authors Guild, option clauses are "Unacceptable Provisions" because these clauses favor publishers only, not authors. An option clause gives the publisher the privilege to publish the author's next book (but only if it wants to).

An option clause potentially binds the author to the publisher, even if the relationship has been unsatisfactory. What if the author's editor leaves? What if the author gets a more attractive offer from another publisher?

The clause typically contains some or all of the terms you MUST accept for the optioned work. Even "first refusal" clauses and "agreements to agree" impede the author's freedom.

Some publishers will simply delete this provision, but if they won't, consider trying to ask for an editor's clause instead.

If the author and her representatives cannot get rid of the clause, limit it:

- Avoid options on "the same terms" and "last refusal rights" (allowing publisher to match terms the author has received).
- Go for a "limited time right of first refusal" on terms "to be mutually agreed upon."
- Rather than agreeing to submit "the manuscript," agree to submit a "detailed proposal and sample chapters." Otherwise, the Author will be obligated to complete an entire manuscript before being allowed to seek an advance from this publisher or any other.
- Limit the time the publisher has to consider the manuscript or proposal. Sixty days is too long. Try for thirty days, and perhaps settle on 45 days.
- Do not let the publisher require publication of the first work before it is obliged to consider the second manuscript or proposal. Publication takes at last nine months and can take as long as 18 months.
- Limit option only to similar books. At a minimum only fiction or nonfiction, as the case may be.

If the publisher requires the Author to wait until publication, then it allows them to assess the success of the first Work, and also ties up the Author before he can submit elsewhere.

- Authors Guild: Improving Your Book Contract

Copyright

The publisher must agree to register the copyright **in the author's name** within three months of initial publication.

Current copyright law does not require authors to formally register their copyright in order to secure copyright protection. Copyright automatically arises in written works created in or after 1978. However, registration with the Copyright Office is a pre-requisite to infringement lawsuits and important benefits accrue when a work is registered within three months of initial publication.

Advance

The publisher's advance against royalties are monies paid before publication and later deducted from royalties earned.

In the end, the publisher will market and promote the Work in the manner it deems best. Probably the only control the author and his representatives have is determined by the size of the advance. The larger the advance, the greater incentive the publisher has to publicize the work.

Out of Print

Traditionally, a work goes "out of print" when the publisher no longer publishes physical copies of the book for a specified period of time, in which case, the author should be able to terminate the contract and regain any licenses granted. Otherwise the publisher has the exclusive right to publish the book, even though it isn't doing so.

These days some publishers will resist reverting rights to the author simply because electronic versions of the work are still available. The Authors Guild suggests that authors not allow ebook editions to qualify as keeping the book "in print."

> An easy compromise is to establish a floor above which a certain amount of royalties must be earned or copies must be sold during each accounting period for your book to be considered in print. Once sales or earnings fall below this floor, your book should be deemed out-of-print and rights should revert to you. Stipulate that as soon as your book is out-of-print, all rights will automatically revert to you regardless of whether your book has earned out the advance.

An out-of-print clause allows you to terminate the contract and regain all rights granted to your publisher after the book stops earning money.

> It is crucial to actually define the print status of your book in the contract. Stipulate that your work is in print only when copies are available for sale in the United States in an English language

> hardcover or paperback edition issued by the publisher and listed in its catalog. Otherwise, your book should be considered out-of-print and all rights should revert to you.

Authors Guild: Improving Your Book Contract - Negotiation Tips For Nine Typical Clauses.

Subsidiary Rights

> Subsidiary rights are rights an author grants to the publisher in addition to the right to initially publish the book. In general … the publisher does not exercise these rights itself. Instead, it licenses them to others and shares the money it gets with the author.

Negotiating A Book Contract,, by Mark L. Levine

An author represented by an agent or a good lawyer won't have to worry because they'll have good advice about what sub rights to grant and which to reserve. Otherwise, it is a tricky issue because the question is: Who is best able to sell and exploint these rights? A tiny publisher in Anchorage, Alaska is probably not set up to sell film rights in Hollywood, nor is it likely capable of licensing rights to a Japanese publisher.

Generally all rights should be reserved to the author and her agents, except those traditionally granted to the publisher, which usually include print-related sub rights like book club and paperback reprint editions, publication of selections, condensations or abridgments in anthologies and textbooks, and first and second serial rights (i.e., publication in newspapers or magazines either before or after publication of the hardcover book).

Usually the author does NOT want to grant NON-PRINT-RELATED sub rights to any publisher unless the publisher is specially qualified to license them. Non-print-related rights include motion picture, television, stage, audio, animation, merchandising, and electronic rights.

Subsidiary rights are usually licensed to third parties and then the publisher will share licensing fees with the author in specified ratios, normally set forth in a table contained in the sub rights section of the contract.

> Beware of any overly inclusive language, such as **"in any format now known or hereafter developed,"** used to describe the scope of the subsidiary rights granted.

> Make sure you are fairly compensated for any subsidiary rights granted. Reputable publishers will pay you at least 50% of the

proceeds earned from licensing certain categories of rights, much higher for others.

Authors Guild: Improving Your Book Contract

E-Book Rights

Obviously e-book rights are becoming as important as, if not more important than, traditional print rights. Also, the definition of an "e-book" is subject to change as publishers experiment with so-called "enhanced books," books featuring audio, animation, artwork, and the like.

The author and her reps need to be certain that the definition of e-book rights includes a "text verbatim only" clause and explicity does NOT include interactive or multimedia rights. Such rights conflict with the dramatic and motion picture rights.

As noted under the termination provisions above, the contract should include a clause calling for a minimum number of sales or a dollar amount of royalties that must be generated for the book to still be considered "in print" under the contract.

If possible obtain a "renegotiation clause," which gives the author and the publisher the ability to renegotiate if the industry standard royalty amounts change in the future or the media used to transmit books changes.