

## LEGAL ISSUES FOR WRITERS

# NEGOTIATING A PUBLISHING AGREEMENT: KEEP A WATCHFUL EYE

<i>Topic</i>	<i>Opening Position</i>	<i>Comment</i>
<b>Duration</b>	Full term of copyright (life of the author plus 70 years)	As a practical matter, the duration of the agreement is likely to be shorter. Make sure that the agreement is terminable when the book is declared out of print.
<b>Territory</b>	Worldwide	Ascertain what territories your publisher can serve effectively. Limit the territory accordingly or negotiate a reversion with respect to any territory not served within a reasonable period.
<b>Rights granted or reserved</b>	Exclusive, worldwide, sublicensable, royalty-bearing right to exercise all author's rights under copyright or authorize others to do so throughout the term of the agreement.	This may serve your purposes but only if it doesn't constitute "biting at air." Negotiate a reversion of any right not exploited within a reasonable period.
<b>Copyright</b>	Trade publishers don't typically require an assignment of rights unless the work is a contribution to a collective work.	To provide you with the greatest flexibility in enforcing your valuable rights, it is critically important that copyright be registered within 3 months following first publication. You may wish to rely on yourself to make sure that's done.
<b>Representations &amp; Warranties</b>	The work is original; the author is the owner of copyright; the work doesn't infringe or violate any third party rights of privacy.	Insist on a knowledge qualifier—"to the best of author's reasonable knowledge" with respect to third-party rights.
<b>Option on author's next work</b>	A right of first refusal to author's next work.	Bargain for a right of first negotiation instead and don't agree to accept the same terms as the current contract.
<b>Competing Works</b>	Author may not publish a competing work without publisher's approval.	Who's to say what's competing? Is such a provision enforceable in any case?
<b>Royalty Basis</b>	Percentage of net revenues (net is gross less certain deductions) with a reserve against returns.	Insist on knowing each category of deductible. Resist deductions for publisher's bad debts or reserves held for more than one accounting period.
<b>Royalties Paid</b>	Quarterly, semiannually, annually.	The longer the accounting period, the more the author steps into the shoes of the publisher's banker.
<b>Termination</b>	Publisher may terminate if author fails to deliver an acceptable manuscript and other reasons.	Author should be able to terminate if royalties are not timely paid or publisher becomes insolvent.