





# Why Would a Writer Need an Attorney?

Mitch Tuchman

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North Carolina Writers' Network

# What We'll Be Covering

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**Copyrights**

**Publishing Law Round-Up**

**Contracts for Traditional Publishing**

**Contracts for Hybrid and Online Publishing**

# “Contracts Are My Disneyland”

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**Authorship/Publishing Agreements**

**Independent Service Agreements**

**Motion Picture Options**

**Talent Agency Agreements**

# “Contracts Are My Disneyland”

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**Joint Authorship Agreements**

**Assignments of Rights**

**Settlement Agreements**

**Termination Agreements**

# “Contracts Are My Disneyland”

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**Model Releases**

**Permission**

**Subsidiary Rights Agreements**

# Copyright

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**Vests in the author when an original work is fixed in a tangible medium.**

**Copyright ownership does not require registration, but enforcement of a copyright does.**

# Your Copyright Rights

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The owner of copyright has the exclusive right to do and to authorize others to do any of the following:



# Your Copyright Rights

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**Reproduce the work in copies**

**Distribute copies**

**Perform the work**

**Display the work**

**Prepare derivative works**



# Publishing Agreements

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**The essence of publishing agreements  
is authorization.**

# Publishing Agreements

## Some Key Terms

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**An agreement is a license to exercise certain rights under copyright.**

**It is not an assignment of rights.**

**You grant a license. You do not assign it. Be sure the language is clear.**

# Publishing Agreements

## Some Key Terms

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### **Duration**

**Generally the full term of copyright.**

**As a practical matter, much shorter.**

**Be sure there is a reversion of rights when the book is declared out-of-print.**

# Publishing Agreements

## Some Key Terms

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### **Territory**

**A publisher may ask for worldwide rights.**

**Ascertain what territories your publisher can serve effectively.**

**Negotiate a reversion for territories granted but not served within a reasonable time period.**

# Publishing Agreements

## Some Key Terms

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**Rights granted and reserved**

**You want your publisher to succeed and make money, playing to its strengths.**

**You don't want your publisher to be "biting at air." Royalties don't accrue to mere aspirations.**

# Publishing Agreements

## Some Key Terms

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### **Copyright**

**Typically publishers don't demand an assignment except in the case of academic works.**

**Consider registering the copyright in the work yourself rather than relying on your publisher to do so.**

# Publishing Agreements

## Some Key Terms

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### **Representations and Warranties**

**You will be asked to make certain statements (representations) concerning the work.**

**It is original. You did not copy anyone else's work without permission.**



# Publishing Agreements

## Some Key Terms

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### **Representations and Warranties**

**The work does not infringe any third party's rights of privacy or publicity.**

**Insist on a knowledge qualifier ("to the best of the author's reasonable knowledge").**

# Publishing Agreements

## Some Key Terms

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**You will be asked to indemnify the publisher for claims arising from an alleged breach your warranties.**

**Be sure your representations are as narrowly circumscribed as possible in order to reduce your risk.**

# Publishing Agreements

## Some Key Terms

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### Royalty Basis

**Customarily a percentage of net revenues with a reserve against returns.**

**Better but less common: a percentage of the cover price.**

**“Net” must be defined. Know every deductible category.**

**Limit the reserve against returns to a single payment period.**

# Publishing Agreements

## Some Key Terms

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### **Royalties Paid**

**Quarterly? Semiannually? Annually?**

**The longer the accounting period, the more the author is stepping into the shoes of the publisher's banker.**

# Publishing Agreements

## Some Key Terms

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**Termination**

**Out-of-print**

**Nonperformance**

**Bankruptcy**

# Publishing Agreements

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**Publishers are not in the business of not publishing. They need writers.**

**If the offer doesn't feel right, walk away.**

**This is not the only offer you will receive.**



# Publishing Agreements

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**Many agreements are ineptly prepared  
and must be revised.**

**That should not be at the author's  
expense.**

**As a practical matter, it often is.**

# What if You Decide to Self-Publish?

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**Self-publishing takes many forms and often involves complicated agreements.**

**Ask yourself: how confident am I going into a legally binding relationship?**



# Hybrid Publishing Agreements

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**Essentially production service contracts.**

**Little likelihood the company functions as a traditional publisher.**

**By the time I see these, they've already gone south.**

**Document everything. He said/she said is not a winning strategy.**

# Online Publishing Agreements

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**Even online self-publishing entails agreements.**

**Little or no room for negotiation.**

**One size fits all.**

**Attorneys are typically not involved.**

**CAN I ANSWER ANY QUESTIONS FOR  
YOU?**



# Disclaimer

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**The slides in this presentation are for informational purposes only.**

**They are not intended to constitute legal advice.**

**In the event of a situation involving a legal issue, we would need to evaluate all of the facts in the light of existing law in order to provide legal advice.**



Mitch Tuchman | Of Counsel

919-590-0390

[mtuchman@morningstarlawgroup.com](mailto:mtuchman@morningstarlawgroup.com)



