COMMON PUBLISHING CONTRACT—QUICKNOTES BY KATHRYN GOLDMAN

CONTRACT LANGUAGE IS IN BLACK. My quick notes are bulleted in blue and not part of the contract.

KEY SECTIONS DISCUSSED [HYPERLINKS]:

GRANT OF PUBLISHER RIGHTS.

1) THE AUTHOR HEREBY GRANTS, ASSIGNS, AND TRANSFERS TO THE PUBLISHER THE FOLLOWING EXCLUSIVE WORLDWIDE RIGHTS AND PRIVILEGES TO AND IN CONNECTION WITH A WORK, PRESENTLY ENTITLED *TITLE OF BOOK* WHICH WORK IS A BOOK.

- As an author, you own the copyright in the book. In the grant of rights provision, you are licensing, *not selling*, your copyright subject to reversion (which means to get back) rights.
- Generally, there are two types of rights: primary publication rights, and subsidiary rights.
- This provision is a license of exclusive worldwide rights which is the broadest possible grant—the right to publish the book in all countries in all languages.
- When licensing broad rights, such as foreign language rights, you need to consider whether this publisher is the best entity for delivering on those rights. Does this publisher actually produce foreign language books, or are they just gathering up rights they might not exploit on your behalf?
- Words that are capitalized in a legal contract mean that they are a defined term. Here, "Work" means *Title of Book*, for instance.

2) THE SOLE AND EXCLUSIVE BOOK PUBLISHING RIGHTS IN PRINTED FORMAT, PAPERBACK AND HARDCOVER, AND THE RIGHT TO SELL COPIES OF THE WORK IN THE OPEN MARKET THROUGHOUT THE WORLD.

- You can divide rights between hardcover and softcover publishers. With the consolidation of the publishing industry, that specialization has become elusive, but you could still reserve either hardcover or softcover rights to license to a publisher with a stronger presence in either one of those markets.
- This provision repeats that the right to sell the Work in any printed format, hardcover or softcover, is theirs "throughout the world."
- Again, it may not be in your best interest to grant rights that a publisher is going to sit on without developing. You need to consider whether some other publisher or company is better situated to exploit a particular set of rights.

3) THE SOLE AND EXCLUSIVE ELECTRONIC BOOK PUBLISHING RIGHTS INCLUDING FORMATS SUCH AS: PDF, HTML, POSTSCRIPT, DJVU, EPUB (IDPF), FICTIONBOOK, MOBIPOCKET, KINDLE, EREADER, TEALDOC, BROADBAND EBOOK, WOLF, TOME RAIDER, ARGHOSREADER, MICROSOFT READER, MULTIMEDIA EBOOK, REPLIGO, AND RELATED ELECTRONIC FORMATS INCLUDING ANY NEW E-BOOK FORMATS INVENTED WHILE THIS AGREEMENT IS IN EFFECT, AND THE RIGHT TO SELL COPIES OF THE WORK IN OPEN MARKETS THROUGHOUT THE WORLD.

- You are unlikely to be able to reserve ebook rights for self-publishing but you may want to try. Publishers simply aren't issuing contracts that don't include ebook rights anymore.

- This language does not include the license of mixed media rights—ebooks with pictures or with sound or both. To clarify that, this provision should specify "text only" ebook rights.

- Ask your publisher about its history of successfully selling ebook translations for their authors. If they don't really do it and are just collecting rights, is this something you may not want to give up.

4) THE SOLE AND EXCLUSIVE AUDIO PUBLISHING AND PERFORMANCE RIGHTS INCLUDING FORMATS SUCH AS: COMPACT DISC (CD), MP3, M4A, M4B, WMA, AND RELATED SOUND FORMATS CURRENTLY AVAILABLE OR INVENTED WHILE THIS AGREEMENT IS IN EFFECT, AND THE RIGHT TO SELL COPIES OF THE WORK IN OPEN MARKETS THROUGHOUT THE WORLD.

- Is this publisher known for developing audio books? As with foreign translations, you should think about whether another publisher is better suited to exploiting audio rights on your behalf or if you want to do it yourself.

- This provision does not take mixed media into account. I would argue that those rights have been reserved under this language, but it is better to make it clear in the contract.

5) THE SOLE AND EXCLUSIVE SUBSIDIARY PUBLICATION RIGHTS SET FORTH BELOW. THESE SUBSIDIARY PUBLICATION RIGHTS ARE GRANTED TO THE PUBLISHER WORLDWIDE.

SUBSIDIARY RIGHTS. THE RIGHTS IN THIS AGREEMENT ARE HEREBY DEFINED TO INCLUDE THE RIGHTS ENUMERATED BELOW AND ARE THE BE SHARED BY THE AUTHOR AND PUBLISHER IN THE PERCENTAGE INDICATED, LESS ONLY SUCH DIRECT EXPENSES, INCLUDING AGENT'S COMMISSIONS, AS SHALL BE INCURRED BY THE PUBLISHER IN DISPOSING OF SUCH RIGHTS:

i)	ABRIDGEMENT, CONDENSATION, OR DIGEST	50%
ii)	ANTHOLOGY OR QUOTATION	50%
iii)	BOOK CLUBS OR SIMILAR ORGANIZATIONS	50%
iv)	REPRINT	50%
v)	SPECIAL EDITIONS	50%
vi)	SECOND SERIAL AND SYNDICATION (INCLUDING REPRODUCTION IN COMPILATIONS, MAGAZINES, NEWSPAPERS, OR IN BOOKS)	50%

- These subsidiary rights can be sliced and diced between other publishers or saved for yourself just like any other right.

- Given how all encompassing this particular contract is, I would have expected language requiring the author to agree to transfer rights to publish in braille, large-type, and other accessible formats.

AUTHOR HEREBY RETAINS ALL RIGHTS TO THE WORK NOT SPECIFICALLY GRANTED TO THE PUBLISHER IN THIS CONTRACT SUCH AS MOVIE AND SCREENPLAY RIGHTS.

- These are the only subsidiary rights the publisher believes it has left the author in terms of the rights retained in the Work—movies and screenplays—probably because the publisher acknowledges that is has no expertise in these areas.

- Like the other rights that you can license, you can divide up movie and screenplay rights further into English and foreign language rights, or live performance and film rights, for example.

AUTHOR'S WARRANTY. THE AUTHOR HEREBY REPRESENTS AND WARRANTS TO THE PUBLISHER THE FOLLOWING:

1) HE/SHE IS THE AUTHOR AND SOLE OWNER OF THE WORK, OR HAS BEEN ASSIGNED EXCLUSIVE RIGHTS TO THE WORK.

- You are the owner of any work you create.
- You do not have exclusive rights to any work you did not create (such as images or song lyrics, for example) and which you used in your book, unless you purchased (or licensed) those rights.
- If you did purchase rights to any portion of your book, that purchase of rights (also called an assignment or license) must be in writing signed by the creator of those pieces of work.
- In order to include the work of others in your book, the rights you secured must be the same rights that you granted the publisher in the Grant of Rights provision above.

2) THE WORK IS ORIGINAL AND NO PART OF THE WORK WAS TAKEN FROM OR BASED ON ANY OTHER LITERARY, DRAMATIC, MUSICAL, FILM, OR GRAPHIC ARTS, EXCEPT AS IDENTIFIED IN THE WRITING BY THE AUTHOR.

- This is the provision in which you are declaring the originality of your work.
- You are stating that you have not developed your story as a derivative of anyone else's work.
- Keep in mind that originality applies to any rights to work you may have purchased to include in your book. If you did buy someone else's work to include in your book, make sure that they give you a warranty of originality in the assignment or license.

3) THE WORK DOES NOT INFRINGE UPON ANY COPYRIGHT, PRIVACY RIGHTS, RIGHTS OF A THIRD PARTY, OR ANY COMMON LAW OR STATUTORY LAW.

- The promise that you did not infringe anyone else's work is the flip side of the warranty of originality—it's like a belt and suspenders from the publisher's perspective.
- The promise that you are not invading any privacy rights or rights of a third party means:

  (a) You aren't intruding on anyone's seclusion (telling secrets about a person that not everyone knows, for example);

  (b) That you haven't used the name or likeness of another person without their consent; or

  (c) You haven't depicted anyone in a false light by attributing to them offensive characteristics, conduct or beliefs which they do not have.

- The common law or statutory law phrase is a catchall. You are promising generally that your work isn't breaking any laws.

4) THE WORK DOES NOT CONTAIN ANY MATERIAL OF A LIBELOUS OR OBSCENE NATURE.

- Defamation (libel and slander) is a potential problem if you are using real people in your fiction. For an in depth discussion on this topic you can refer to this post: How to Use Celebrities and Other Real People in Your Stories.
- Obscenity is a slippery concept. Depending on your genre, you may need to negotiate this out of the contract.

5) THE WORK IS NOT IN THE PUBLIC DOMAIN, AND HAS NOT BEEN PUBLISHED IN ANY FORMAT WITH ANY COMPANY THAT MAY STILL OWN SUCH RIGHTS TO THE WORK.

- The publisher wants to be sure that no one else can publish this work.
- This is different from originality. This is about exclusivity, the publisher wants to be the only entity to offer your work to the public.

- This is the provision that makes serializing your work on a blog in order to build an audience before finding a publisher problematic. If you had done that, the work would have to come off the site.

6) THE AUTHOR HOLDS THE FULL POWER OF AUTHORITY TO GRANT THESE RIGHTS.

- This means that you are who you say you are and you have the rights that you say you have.
- Basically, you cannot contract away that which you do not own.

7) IF THIS WORK HAS BEEN PREVIOUSLY PUBLISHED IN ANY FORM, THE AUTHOR WARRANTS THAT THE RIGHTS GRANTED HEREIN HAVE BEEN REVERTED TO HER/HIM. AS AN ADDENDUM TO THIS AGREEMENT THE AUTHOR SHALL PROVIDE A WRITTEN MEMORANDUM DOCUMENTING THE REVERSION OF THE RIGHTS GRANTED BY ANY PUBLISHING COMPANY THAT MAY STILL OWN PROPRIETARY RIGHT TO THE WORK, ALONG WITH DOCUMENTATION FROM THE PREVIOUS PUBLISHER STATING THAT ALL RIGHTS BELONG TO THE AUTHOR, IF SUCH DOCUMENTATION IS REQUESTED BY ABC PUBLISHING.

- As with paragraph (5), this goes to exclusivity.
- The publisher does not want to spend time and money producing and marketing a book only to be in competition for the same market with someone else.

8) IF A JUDGMENT IS OBTAINED AGAINST PUBLISHER FOR USURPING RIGHTS STILL CONTROLLED BY A PUBLISHER OR OTHER ENTITY OTHER THAN THE PUBLISHER OR THE AUTHOR, THE AUTHOR AGREES TO HOLD THE PUBLISHER HARMLESS AND TO INDEMNIFY THE PUBLISHER FOR DAMAGES AND COSTS. IF PUBLISHER PREVAILS AGAINST A SUING PARTY OR RESOLVES THE MATTER BY AN OUT OF COURT SETTLEMENT, THE AUTHOR WILL BE LIABLE TO INDEMNIFY THE PUBLISHER FOR DEFENSE AND SETTLEMENT COST.

- This is where you are putting your money where your mouth is. If you fail to control the rights to your work and there is someone else out there with the right to publish your work, you may end up paying for that broken promise.
- The key here is to carefully monitor all of your contractual obligations. If you're slicing and dicing rights to your work as discussed in the Grant of Rights section, you need to keep track of which rights you've granted and to whom. Good bookkeeping is paramount.
- Consider negotiating this clause so that:

  (a) Any indemnity is limited to the amount of money paid by the publisher to you for the particular title at issue (that will cap your risk and limit your potential exposure);

  (b) The publisher cannot settle any claim without your consent (you are in a better position to determine what may be a bogus claim); and

  (c) You have the right to participate in the defense of the claim being brought including picking the lawyer (if you have to pay, you want to keep the costs down).

9) AUTHOR AGREES TO HOLD PUBLISHER HARMLESS AND INDEMNIFY THE PUBLISHER AGAINST ANY CLAIM, DEMAND, ACTION, SUIT, PROCEEDING OR ANY EXPENSE WHATSOEVER, ARISING FROM CLAIMS OF INFRINGEMENT OF COPYRIGHT OR PROPRIETARY RIGHTS, OR CLAIMS OF LIBEL, OBSCENITY, INVASION OF PRIVACY, OR ANY OTHER UNLAWFULNESS BASED UPON OR ARISING FROM THE PUBLICATION OR ANY MATTER PERTAINING TO THE WORK.

- This is the liability clause for other promises you have made in the contract. If any of the rights, claims of originality, privacy protections, etc. that you promised in the earlier paragraphs turn out not to be true, or yours, or you violated in some way. This is where you pay the publisher for any problems your broken promises may have caused.

- Again, consider negotiating this clause so that:

  (a) Any indemnity is limited to the amount of money paid by the publisher to you for the particular title at issue (that will cap your risk, limit your potential exposure);

  (b) The publisher cannot settle any claim without your consent (you are in a better position to determine what may be a bogus claim); and

  (c) You have the right to participate in the defense of the claim being brought including picking the lawyer (if you have to pay, you want to keep the costs down).

10) AUTHOR WARRANTS AND REPRESENTS THAT TO THE BEST OF AUTHOR'S KNOWLEDGE AND BELIEF, ALL STATEMENTS OF FACT CONTAINED IN THE WORK ARE TRUE AND BASED ON APPROPRIATE AND DILIGENT RESEARCH.

- If you are representing something as a fact in your work, you have done sufficient research to support your contention that the fact is true. The true fact provision.

11) AUTHOR WARRANTS THAT HE/SHE WILL NOT HEREAFTER ENTER INTO ANY AGREEMENT OR UNDERSTANDING WITH ANY PERSON OR ENTITY THAT WOULD CONFLICT WITH THE RIGHTS GRANTED TO THE PUBLISHER DURING THE TERM OF THIS CONTRACT.

- This is where you promise not to grant rights to any other person or publisher that conflict with the rights granted in this contract.

- If you are dividing up your rights to create multiple revenue streams, you need to pay careful attention. Monitor your rights and keep good books.

12) THE AUTHOR WILL NOT, WITHOUT THE WRITTEN CONSENT OF THE PUBLISHER, WRITE, PRINT, PUBLISH OR PRODUCE, OR CAUSE TO BE WRITTEN, PRINTED, PUBLISHED, OR PRODUCED, DURING THE CONTINUANCE OF THIS AGREEMENT, ANY OTHER EDITION OF SAID WORK OR ANY WORK IN ANY FORM OF A SIMILAR CHARACTER OR TITLE TENDING TO INTERFERE WITH OR INJURE THE SALE OF THE WORK IN ANY MANNER.

- This provision needs to be deleted if you have divided the rights to your work.

- This provision needs to be deleted if you write non-fiction and are publishing in your area of expertise or life's passion.

- A non-compete provision in a publishing contract could turn you into a one book author.

NON-COMPETING WORKS.

THE AUTHOR WILL NOT, WITHOUT WRITTEN CONSENT OF THE PUBLISHER WHICH SHALL NOT BE REASONABLY WITHHELD, PERFORM SERVICES WHICH RESULT IN A COMPETING BOOK WITH ANOTHER PUBLISHER, AND WILL NOT PUBLISH OR FURNISH TO ANY OTHER PUBLISHER ANY WORK OF SIMILAR CHARACTER ON THE SAME SUBJECT MATTER AS THE WORK THAT WOULD, IN THE REASONABLE OPINION OF THE PUBLISHER, BE LIKELY TO INTERFERE WITH OR INJURE THE SALE OF THE WORK.

Let's take this clause apart phrase by phrase and re-order it so it makes a little more sense:

1. "THE AUTHOR WILL NOT . . . PERFORM SERVICES WHICH RESULT IN A COMPETING BOOK WITH ANOTHER PUBLISHER."

   - The first problem in this phrase is "perform services." Writing a book is not performing services, but co-authoring, or writing an introduction, editing, providing a blurb for, critiquing or even *beta* reading for another author could be considered performing services. Consider whether you wish to be precluded from engaging in these services for your colleagues because of a provision in a seemingly unrelated publishing contract.

- The second issue in this phrase is: what is a "competing book?" In this contract, the term is undefined and when left open can only be the source of trouble down the road.
- If you write non-fiction and the book that is the subject of the contract is about your area of expertise, any other book in your area of expertise will be considered a competing book. If you are an artist, for example, renowned for creating, and perhaps teaching, art in a certain style, this clause could keep you from writing any other books on the style of art on which your life's body of work has been based. You could also be precluded from creating workbooks, or templates, for your students.
- For fiction writers, a competing book could be one in the same genre or even one that comes out at the same time as the book under contract. Some publishers take the position that a competing book is one that uses the same characters in a sequel as the published book.

2. "THE AUTHOR WILL NOT . . . PUBLISH OR FURNISH TO ANY OTHER PUBLISHER ANY WORK OF SIMILAR CHARACTER ON THE SAME SUBJECT MATTER."
   - Notice that this part of the clause refers to a "Work," not a book. Most publishers are going to take the position that "Work" is broader than the category "books" and includes books. "Work" may also include blog posts, short stories, and nonfiction articles. In this rapidly evolving world of digital multimedia, "Work" could also mean video content, podcasts, even PowerPoint presentations.
   - "[A]ny other publisher" is not limited to traditional publishing companies. It also means you, as a self-publisher, or a colleague with respect to a guest post on their blog, for instance.
   - If you write in a particular genre, this part of the clause could prevent you from writing another novel in your genre. This would preclude you from writing in the same genre even using a pen name.
3. ". . . WITHOUT WRITTEN CONSENT OF THE PUBLISHER WHICH SHALL NOT BE REASONABLY WITHHELD . . ."
   - When authors raise the oppressive nature of the non-competing works clause with the publisher *before they sign* the contract, the representative of the publisher with whom the author is working often points to this phrase and says, "It's never a problem. We're not unreasonable and always give permission for other works." If that's the case, then the clause should come out of the contract.
   - Imagine having to request the written permission of your publisher every time you wanted to write a blog post on the same subject matter as your book.
   - Worse still, imagine having to ask for permission every time you want to write something that will make money for you. A publisher should not be in the position of controlling your income with this clause.
4. ". . . THAT WOULD, IN THE REASONABLE OPINION OF THE PUBLISHER, BE LIKELY TO INTERFERE WITH OR INJURE THE SALE OF THE WORK . . ."
   - This part of the Non-Competing Work clause inextricably binds your income-producing future to the whims of the publisher. It is the publisher's opinion whether your proposed western romance will injure the sale of your sci-fi thriller in which the protagonist has a love interest, for example.

- You cannot count on a publisher to be reasonable. Here's a story from an author whose (then) Big 6 publisher thought that she breached the non-competing works clause of her contract by self-publishing a collection of short stories (some of which the publisher had already rejected!): Sleeping with the Enemy: A Cautionary Tale. In short, they terminated her contract and demanded the return of her $20,000 advance.

GENERAL TERMS OF CONTRACT.

1) TERM. THIS AGREEMENT SHALL BE FOR SEVEN (7) YEARS FROM THE EFFECTIVE DATE OF THE CONTRACT AND WILL TERMINATE AUTOMATICALLY. ALL PUBLICATION RIGHTS WILL THEN REVERT BACK TO THE AUTHOR. THE AUTHOR IS FREE TO RESUBMIT THEIR BOOK TO ABC PUBLISHING INC. OR ANY OTHER PUBLISHER AT THAT TIME.

- This is a sunset clause. The contract is over at the end of seven years. This is a key provision. A specific time limit in a publishing contract is important. Publishing contracts should not last forever, or the life of the copyright in the work.

- A time-based limitation is concrete and not susceptible to manipulation like a sales velocity clause in which a writer can request reversion of her rights if sales fall below a certain level.

- A time-based limitation is particularly important with on-demand printing and "never out of stock" ebooks. With current technology, reversion of rights based on the notion of the book being out of print is meaningless.

2) TAX WITHHOLDING. IT IS MUTUALLY AGREED THAT STATE, FEDERAL, AND FOREIGN TAXES ON THE AUTHOR'S ROYALTIES ARE SOLELY THE RESPONSIBILITY OF THE AUTHOR. AUTHOR IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF THE PUBLISHER.

- This provision should serve as a reminder that you are in business. The publisher will issue you a 1099 in January reporting the royalties paid to you in the previous year. You will be responsible for paying taxes on those royalties. The publisher will not be withholding taxes for payment on your behalf.

- Because you are an "independent contractor" and in your own business, you need to keep good records. Remember that all business related expenses are deducted from your gross earnings at tax time reducing your taxable income.

3) TITLE CHANGE. A CHANGE OF TITLE OF THE WORK DOES NOT VOID THIS CONTRACT.

- This provision cuts both ways. You cannot change the title of your work just to get out from under your contractual obligations and shop the work to another publisher.

- Similarly, the publisher cannot change the title of the work then reopen negotiations on royalties, length of the license, or anything else in the contract.

4) BANKRUPTCY. IF FOR ANY REASON THE PUBLISHING COMPANY FILES FOR BANKRUPTCY PROTECTION, CEASES TO CONDUCT BUSINESS, OR MAKES AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS THIS AGREEMENT SHALL BECOME VOID AND ALL RIGHTS GRANTED HEREIN WILL REVERT BACK TO THE AUTHOR.

- Rights reversion in the event of the publisher's bankruptcy is a key provision and I recommend that it be included in any license agreement that you sign.

- If the publisher goes into voluntary bankruptcy or is forced into bankruptcy by its creditors, your copyrights revert to you and do not become part of the bankruptcy estate to be sold by the trustee to the highest bidder.

- This provision benefits the publisher, as well. If the publisher's entire stock in trade, its licenses, reverts to the authors if bankruptcy proceedings are initiated, creditors are less likely to force the publisher into bankruptcy. All of the publisher's assets would disappear and there would be nothing left for the creditors.

5) ARBITRATION AND VENUE. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WHEREVERTHEPUBLISHERIS. ANY CONTROVERSY OR CLAIM ARISING OUT OF THIS AGREEMENT OR THE BREACH THEREOF SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH RULES THEN OBTAINING OF THE AMERICAN ARBITRATION ASSOCIATION AND JUDGMENT UPON THE AWARD MAY BE ENTERED IN THE HIGHEST COURT OF THE FORUM, STATE OR FEDERAL, HAVING SUCH JURISDICTION. SUCH ARBITRATION SHALL BE HELD IN THE CITY OF XXX, STATE OF YYY UNLESS OTHERWISE AGREED BY THE PARTIES.

- This is a "choice of law." provision. Laws are different in each state. Here, you are agreeing that the law of a state other than your own may apply to the terms of the contract.

- This is also where you give up your right to a trial by jury or even in front of a judge by agreeing to arbitration.

- Arbitration tends to favor larger corporations over individuals and filing a complaint in arbitration is more expensive than filing a lawsuit.

- Arbitration is faster than litigation, normally, but there is no right to appeal.

- If there is a dispute with the publisher, the arbitration will take place wherever the publisher is located, which is something else that can run up expenses if you have to travel.

- I recommend including a provision that encourages a good faith attempt at resolution of any dispute and perhaps mediation before resort to a complaint in arbitration.

6) NOTICE. ANY WRITTEN NOTICE REQUIRED UNDER ANY OF THE PROVISIONS OF THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN PROPERLY SERVED BY DELIVERY IN PERSON OR BY MAILING THE SAME TO THE PARTIES HERETO AT THE ADDRESSES SET FORTH ABOVE, EXCEPT AS THE ADDRESSES MAY BE CHANGED BY NOTICE IN WRITING, PROVIDED HOWEVER, THAT NOTICES OF TERMINATION SHALL BE SENT BY REGISTERED OR CERTIFIED MAIL.

- Make sure you keep your address current with the publisher.

- Keep track of where the publisher is if it moves its offices.

7) ASSIGNMENT. THIS AGREEMENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE PARTIES HERETO, THEIR SUCCESSORS, ASSIGNS, EXECUTORS, ADMINISTRATORS, AND/OR PERSONAL REPRESENTATIVES AND MAY BE ASSIGNED BY EITHER PARTY HERETO, EXCEPT THAT NO ASSIGNMENT BY THE AUTHOR SHALL BE VALID AGAINST THE PUBLISHER UNLESS THE PUBLISHER HAS RECEIVED WRITTEN NOTICE FROM THE AUTHOR AND HAS CONSENTED TO THE SAME IN WRITING.

- This is a problem provision. In it, you are agreeing that the publisher has a right to sell ("assign") this contract and all the licensing rights that go along with it.

- This is a problem because it means that you can start a relationship with a publisher only to have your contract sold to some other entity and you have no say over it. You may not want to be in business with that other entity.

- The publisher likes this provision because it allows them to be bought by a larger publisher.

- I recommend that this provision be negotiated so that the contract cannot be assigned by either party without the other party's consent. That way you have control over who your business partners are.

8) WAIVER. A WAIVER OF ANY BREACH OF THIS AGREEMENT OR OF ANY TERMS OF CONDITIONS BY EITHER PARTY THERETO SHALL NOT BE DEEMED A WAIVER OF ANY REPETITION OF SUCH BREACH OR IN ANY WISE AFFECT ANY OTHER TERMS OF CONDITIONS HEREOF; NO WAIVER SHALL BE VALID OR BINDING UNLESS IT SHALL BE IN WRITING, AND SIGNED BY THE PARTIES.

- This means that if you (or the publisher) let a breach of the contract go uncorrected, that doesn't mean you've given up your right to enforce the next breach of the contract.

9) ENTIRE AGREEMENT. THIS AGREEMENT AND ANY ATTACHMENTS HERETO CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE CONTRACTING PARTIES CONCERNING THE SUBJECT MATTER HEREOF. ALL PRIOR AGREEMENTS, DISCUSSIONS, REPRESENTATIONS, WARRANTIES AND COVENANTS ARE MERGED HEREIN. THERE ARE NO WARRANTIES, REPRESENTATIONS, COVENANTS OR AGREEMENTS, EXPRESSED OR IMPLIED, BETWEEN THE PARTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. ANY AMENDMENTS OR MODIFICATIONS OF THIS AGREEMENT SHALL BE IN WRITING AND EXECUTED BY THE CONTRACTING PARTIES.

- The entire deal is in this contract. Period.
- Emails from the publisher saying, "Don't worry about it. We'll work something out," mean nothing. Unless it is in the contract, it is unenforceable.
- If the publisher is promising you something and it's not in the contract, have them put it in there. Otherwise, there is no promise and you cannot rely on it.

GRANT OF PUBLISHER RIGHTS.
AUTHOR'S WARRANTY.
NON-COMPETING WORKS.
GENERAL TERMS OF CONTRACT.

This contract annotation is not legal advice on any specific contract. It is an attempt to educate you as to what the terms of a publishing contract mean so you can decide whether you should negotiate for something different.

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