



Australian Society of Authors

Literary Agent and Author Agreement

Agreements with agents are legal documents covering those areas where the author/illustrator appoints the agent to act on his/her behalf. The ASA recommends written agreements, mainly to make the agents' responsibilities and obligations quite clear. The agreement may be a formal contract or simply a signed letter of agreement.

The author/agent agreement usually commits the author to an exclusive arrangement with the agent – at least within the territory set out in the agreement (e.g. Australia, worldwide, Australia and New Zealand). The agreement might relate to a specific work or works, or all of your work of a specific type (e.g. book-length works of fiction).

The agent undertakes to promote and place your work for publication, and to act professionally in representing your interests. Agents should not agree to major deals without consulting you. They should inform you fully of the terms and conditions of their agency and declare whether or not they charge authors a reading fee. Agents negotiate contractual terms with publishers on your behalf and check royalty statements for accuracy. They also monitor any subsidiary licensing of your work.

Many agents also offer editorial guidance, and will advise you about current trends and conditions within the publishing industry. Some agents also agree to liaise with publishers in relation to promotion and publicity for you and your work.

For published authors, commissions paid to agents are tax deductible.

Disputes do arise between authors and agents. Causes vary from agents' failure to return phone calls to authors' failure to produce manuscripts on time. Usually such disputes can be resolved without resorting to the intervention of a third party. However, to cover both parties, some agents agree to the inclusion of a mediation clause in their contract. This allows agent and author to resolve disputes with a trained mediator before the dispute becomes a serious one.

If you are unsure about the agent's credentials, ask them for a list of clients. If you are negotiating with overseas agents, they may be prepared to give you contact details for some of their clients.

Most Australian professional agents are members of the Australian Literary Agents' Association (ALAA). Members agree to a code of conduct. A list of members can be found at

www.austlitagentsassoc.com.au

SAMPLE AGREEMENT

Some agents offer quite formal contracts with numbered paragraphs relating to each of the basic areas covered by the agreement. Others prefer a 'letter of agreement' which, when signed, carries the same legal weight as a formal contract. In either case, the document will state the names (and addresses) of the parties and should cover the following areas:

- *The Work* – particulars of the work/s (books, scripts, articles, film rights, electronic rights) which the agent agrees to represent. Most agents do not take a commission on prizes, PLR, CAL payments or any payment that has not involved their direct representation of your work.
- *The Duration* – the period of time for which the agreement remains valid. Most agency agreements continue until a formal termination, but some agents will agree to two (or more) year terms.
- *The Territory* – geographical (most agents want world rights).
- *Commissions* – agreements should clearly state details of commissions to the agents for sale/management of particular rights, including overseas rights, film rights. Agents' commission rates may vary somewhat, however ALAA-accredited agents inform the ASA that their standard rate in 2012 for new clients is 15%. This can rise to 20- 25% when overseas rights are sold and an overseas agent is involved in the negotiation. He/she will receive part of this commission.
- *Accounting* – payment (less agreed commission) should be made to the author within 14 days of payment to the agent. Authors' money should be kept in a trust account.
- *Deductions* – details of charges to be made by the agent for phone calls, faxes, photocopying. These are usually only charged if 'unusual' expenses are incurred (eg. photocopying of a manuscript).
- *Termination* – terms on which either party can terminate the agreement and arrangements for continued payments on rights already sold by the agent.

The agreement should be signed and dated by both author and agent. Members of the ASA may have agent agreements reviewed as a member benefit. Please contact the ASA for more information.

© Australian Society of Authors, 2012
(8th Edition)

Originally published in 1998



Australian Society of Authors

Australian Society of **Authors**

ABN 26 008 558 790

Suite C1.06 22 - 36 Mountain St, Ultimo NSW 2007

T: 02 9211 1004 | F: 02 9211 0125

asa@asauthors.org | www.asauthors.org

Copyright © 2010 Australian Society of Authors
Detail from ASA Medal design by Darrell Sibosado