

Literary Agent and Literary Attorney

by Chazda Albright -

<http://greatstorybook.com/literary-agent-and-literary-attorney/>

This entry is part 1 of 24 in the series [Publishing Biz](#)

[Publishing Biz](#)

- [Literary Agent and Literary Attorney](#)
- [Self Publishing vs. Traditional](#)
- [7 Types of Publisher Rejection And How To Deal With Them](#)
- [Shady Publisher: Five Things to Check](#)
- [Illustrated Book Submissions: The 7 Don'ts](#)
- [Publisher vs. Producer: what's the difference](#)
- [How to Self-Publish](#)
- [Traditional Publishers: the pros and cons](#)
- [Self Publishing: design for success](#)
- [The Accidental Trilogy: mistake every writer makes no more than once](#)
- [Author Scott Turow Speaks: the biggest issues facing authors today](#)
- [How to Get a Literary Agent](#)
- [Agents Looking for Children's Books](#)
- [Query Letters: how to make them rock](#)
- [Book Sales Seasons](#)
- [The 9 Types of Editors](#)
- [How To Find the Right Publisher](#)
- [Top 20 Children's Book Agents 2015](#)
- [The Best Ways to get an Agent](#)
- [Increase Book Sales with a Great Title: 9 Tips](#)
- [Find the RIGHT AGENT for YOU: tips & resources](#)
- [International Appeal: how to write for it](#)
- [How to Find Great Storybooks](#)
- [What to DO if your Book gets Stolen](#)

What are the differences between a literary agent and literary attorney?

If you're ready to take your writing career to the next level, you might be wondering whether you need one, or both.

Intellectual Property and Copyright Law – these are the legal buzzwords you’ve read and heard about from other writers. No one wants their work to be stolen, but it does indeed happen.

Copyright Law is very clear-cut and obvious ([for a basic list of Rights Terms, go HERE](#)), but ensuring that the law is followed is another matter entirely. Too, any Agreement you sign can legally override essential copyright laws and swindle you out of your rights – if you are tricked into signing a document you don’t fully understand.

So let’s talk about the business of working with agents and attorneys and protecting your rights.

What you’ll get here:

- The essential things to know about a literary agent, a literary attorney and the differences between them.
- How to financially compensate a literary agent and attorney (totally different).
- How to get and let go an agent and an attorney (totally different).
- How to decide whether and when you need an agent or attorney.

Most writers who complain about their experiences with publishers do not suffer the most feared Big Problem with getting pirated or tricked out of their intellectual property (though this does indeed happen). Most of the time, it’s a complaint about something much more specific (and therefore easier to overlook), such as:

- The book cover design isn’t what the author wanted. (I never signed-off on that!)
- The marketing efforts of the publisher fall far short of the author’s expectations. (The publisher hasn’t done a thing!)
- The author’s unhappy about how a translation deal was executed. (It isn’t even the same story any more!)

All of these specifics (and more) are outlined in a contract with a publisher. As hard as it is for an author to win over a literary agent and convince them to represent their work, it isn’t the agent’s job to be a legal expert. They have publishing knowledge and connections and they can sell an idea (you).

It is quite possible that a publisher wanting to push the limits of legalese in their favor could well test you and your agent’s legal knowledge by simply sending the most awful contract they can legally submit to you for consideration.

The publisher has attorneys who write-up their legal documents on their behalf, and those documents favor the publisher’s interest, not yours and not your agent’s.

So what do you need to know?

Let’s first break down what an agent does and compare that to what a literary attorney does.

A literary agent represents works created by a writer and sometimes chooses to represent the writer,

evening helping to hone the writer's career (it really depends on the agent). An agent has connections to various publishing professionals and also has insider knowledge of what it is those contacts want and don't want for each publishing season, year to year.

NOTE: Agents focus their careers based on their personal interests. Follow their Twitter accounts (nearly all agents are on Twitter), read their blogs (if they have one), and look for their Wish List (literally, that agent's list of what manuscripts they are desperate to get Right Now). Be specific and targeted in your search.

A literary attorney is a specialized lawyer of copyright and (sometimes) trademark laws. This kind of attorney knows all the ins and outs of legalese and can protect the intellectual property rights of the creator. Some literary attorneys also specialize in media rights such as film, theatre and music.

Certain high-stakes literary agents also hire literary attorneys to represent them, especially when dealing with foreign rights and media rights.

NOTE: Attorneys are specialized, just like doctors. If you want your rights as an author to be protected, you cannot use a general-purpose attorney. Seek a Literary Attorney, because that is their specialty. (Read: a real estate attorney, animal rights attorney, divorce attorney – none of these will help you. Even if they're your friend or family, do not seek their legal advice. Going to a general law attorney about your publishing contract is like asking a Podiatrist about your toothache.)

Doesn't a literary agent already do what an attorney would do?

No. Some really top-notch agents are quite well versed in legal documents, but not all are and unless they also have a law degree with a focus in intellectual rights, they don't have the same level of expertise. It isn't a job requirement, and it is quite possible for a well-intentioned agent to be taken for a ride... and your work with them.

How to PAY.

Agents and attorneys are financially compensated in completely different ways.

Agents

Agents are paid by a percentage, typically 15%. There are some hotshot agents who take 20%. Make sure you know an agent's personal client list before signing (not just the client list of their agency, but of them personally).

The percentage is taken from whatever they're able to earn on your behalf. So your agent only gets paid if you do.

Literary Attorneys

Attorneys in this field typically earn by the hour, usually between \$350-\$700/ hour depending on how

experienced they are. (Again, ask for their client list and also a list of important cases they've won.)

When you get a monthly bill (only on those months you needed your attorney's services), the bill is fully itemized. Their times are generally divided into sections of 10-15 minutes, so if your attorney only needed 15 minutes to deal with something, that will be noted on your bill and what you'll be paying. (Quick Math: If they require \$500 an hour, that's \$125 for 15 minutes.)

NOTE: A literary attorney will consider phoning and emailing on your behalf Working Minutes, so make your calls and emails short and direct. Ahem.

Getting & Letting Go

How you obtain the services of an agent and attorney are quite different. What you need to do to get rid of them? Also quite different.

Agents

You apply to agents and essentially beg them on your hands and knees to represent your work, so it isn't a matter of hiring, really. If you are unhappy with your agent and no longer want them working with you, that's not so easy.

You have a contract with certain specific terms, so the contract you sign with an agent will express the specifics of how you need to terminate your Agreement with them and their agency. This process can take months. Be sure your rights are protected and that you take them with you.

Literary Attorneys

You contact an attorney like you would anyone else you'd want to do business with. You can even phone them if you wish. (Never phone an agent unless they ask you.) If you like the attorney and they have time for you, that's about all that needs to happen.

Attorneys work by the hour, so if you should be unhappy with them or you find another attorney that better suits you, letting them go is very simple. They finish whatever they were working on for you, and that's that.

Attorney-Agents

There are some literary attorneys who decide, after some time, to also represent their clients as an agent would. These are quite rare, but the theatre industry has so much overlap into publishing, it's becoming more common. In some situations, an attorney-agent will be your agent and therefore gain a percentage. How this might overlap with their attorney fees would need to be discussed carefully and thoroughly. How it is delineated is determined by that firm.

NOTE: When asking this type of attorney to represent your work as an agent would, that working relationship does change. You submit your work just as you would to an agent. You cannot simply call

them up and hire them to do that for you.

It is possible that having an attorney as your agent might give you an edge, especially if you need to take your project to a level where trademark and film rights are an issue. But as with anything else, you'll need to investigate each firm you consider - very thoughtfully.

Here are some literary attorneys who also represent some of their clients as an agent would:

- [Elaine English](#)
- [Levine Plotkin & Menin](#)

What do you need?

You already know that traditional publishers will really only consider your work if it's shown to them via an agent. This is the current trend in publishing, and that has fully permeated children's books as well.

If you are considering signing a contract with an agent for the first time, you might want to have a literary attorney look at it before you sign. Not that you shouldn't trust that agent, but having an agent explain that particular legal document to you is unquestionably a conflict of interest.

If you are dealing with a contract for a small press or printing company, the financial compensation for your own work probably won't cover the cost for the attorney to read the contract. Sad but true. If an agent is helping you with the deal, that's great. Otherwise, read slowly and carefully. (Again, [for some basics on copyrights, go HERE.](#))

If you are about to sign a contract with a major publisher, you should be well paid enough to hire the professional services of a literary attorney. If it looks like you won't be, then you should *most definitely get an attorney!*

What have your dealings with agents, publishers and attorneys been like? Have you had bad experiences? Good ones? Write below and let me know – or, as ever, send me an email. I love getting those.

Keep creating, no matter what.

This entry is part of the series

[Publishing Biz](#)

Be sure to check out the other posts:

[Self Publishing vs. Traditional >>](#)